

Transcript of the Testimony of
Andrew M. Casden, M.D.

Date: February 23, 2017

Case: Jose Bauta v. Greyhound Lines, Inc., et al.



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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
JOSE BAUTA,

Plaintiff,

-vs-

GREYHOUND LINES, INC., SABRINA
ANDERSON, AKOS GUBICA, KAROLY GUBICA,
CAV ENTERPRISE LLC, FIRST GROUP
AMERICA, INC., and FIRSTGROUP, PLC,

Defendants.

Case No.: 14-3725 (FB)(RER)

-----x

5 East 98th Street
New York, New York

February 23, 2017
1:57 p.m.

Deposition of ANDREW M. CASDEN, M.D.,
pursuant to Notice, before Darby Ginsberg,
RPR, a Notary Public of the State of New York.

Andrew M. Casden, M.D.
2/23/2017

Page 2

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Andrew M. Casden, M.D.
2/23/2017

Page 3

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11
12
13 ALSO PRESENT:

14 HONORABLE RAMON E. REYES, JR.

15 (Appearing via telephone during telephone
16 hearing only)

Andrew M. Casden, M.D.
2/23/2017

Page 4

----- I N D E X -----

WITNESS	EXAMINATION BY	PAGE
ANDREW M. CASDEN	MR. McELFISH	5

----- E X H I B I T S -----

CASDEN	DESCRIPTION	FOR I.D.
Exhibit 1	Report of Dr. Casden dated September 28, 2016	124

(EXHIBIT TO BE PRODUCED)

Andrew M. Casden, M.D.
2/23/2017

Page 5

1 A N D R E W M. C A S D E N, M.D., called
2 as a witness, having been first duly sworn,
3 was examined and testified as follows:
4

5 EXAMINATION BY

6 MR. McELFISH:

7 Q. Okay, Doctor. Good afternoon. How are
8 you today?

9 A. Good, thanks.

10 Q. Tell me a little bit about your
11 background.

12 A. I went to Cornell University, med school
13 also; trained in orthopedic surgery at the
14 Hospital for Joint Disease, and then spent a year
15 in Chicago doing spinal surgery.

16 Q. Okay. And you are board certified in
17 what areas?

18 A. Orthopedic surgery.

19 Q. Okay. And how long have you been doing
20 expert witness work?

21 A. Oh, probably about seven years or so.

22 Q. How long have you been practicing
23 medicine?

24 A. Twenty-eight years or so.

25 Q. What made you begin doing expert work?

Andrew M. Casden, M.D.
2/23/2017

Page 6

1 A. A friend of mine is a lawyer; asked me
2 if I wanted to do some work for him, and it
3 sounded like a good opportunity, so I started
4 doing a little work.

5 Q. What was his name?

6 A. John Fabiani.

7 Q. You guys just had a case together,
8 didn't you?

9 A. Yes.

10 Q. Everly?

11 A. Correct.

12 Q. Do you know what happened in that case?

13 A. Yeah.

14 Q. Okay. Now, when were you first
15 contacted by the defense in this case?

16 A. Can I have my file back?

17 Q. Oh, yes. Yes. Of course.

18 A. Sometime around a month or two before
19 January of '16.

20 Q. Okay. Who contacted you?

21 A. Somebody from the firm of Marshall,
22 Dennehey, Warner, Coleman & Goggin.

23 Q. Okay. Now, you brought with you your
24 report today?

25 A. Correct.

Andrew M. Casden, M.D.

2/23/2017

Page 7

1 Q. Okay. And did you bring any other file
2 materials or notes or bills or reading material
3 or records?

4 A. No, I didn't.

5 Q. Do you have other materials?

6 A. Not anymore, no.

7 Q. What did you do with them?

8 A. I destroy them. I shred them when I am
9 done with them. Otherwise, I would have big
10 piles. I just keep the reports.

11 Q. Okay. In your report that you have
12 today, does it lay out the records that you
13 reviewed in preparation for your opinions in the
14 case?

15 A. It lays out the ones I thought were
16 pertinent and valid and important.

17 Q. Does it lay out the ones that you did
18 not think were important?

19 A. No.

20 Q. All right. What -- do you recall who
21 the person was from Marshall Dennehey that
22 contacted you?

23 A. Probably Nadia Niazi.

24 Q. Okay. Had you ever had cases with that
25 law firm before?

Andrew M. Casden, M.D.
2/23/2017

Page 8

1 A. I don't believe so.

2 Q. How about Lewis Brisbois? Have you ever
3 worked for that law firm?

4 A. Yes.

5 Q. How many times?

6 A. Quite a few. Probably 25 now, I would
7 say, maybe even a little more.

8 Q. All right. Give me one second here. I
9 just kind of walked in. Let me get it together
10 for a second.

11 Can you recall, either from your
12 recollection or if it's in your report, what the
13 scope of your assignment was in this case?

14 A. My assignment is an examination of the
15 plaintiff, a review of the medical records and
16 MRIs, and then a report.

17 Q. Were you asked to opine on anything in
18 particular?

19 A. I opined as to -- no, nothing in
20 particular.

21 Q. Were you asked to review, for instance,
22 whether or not the injuries in this case to Mr.
23 Bauta were causally related to the accident?

24 A. Yes. That would be part of the scope of
25 what I report on usually.

Andrew M. Casden, M.D.

2/23/2017

Page 9

1 Q. Okay. Were you asked, for instance, to
2 report on and have an opinion as to whether or
3 not the treatment and care he received, including
4 the surgery, was reasonable and necessary?

5 A. You know, usually I don't -- I am not
6 asked to opine of anything in particular. It's
7 just the report that I write. That may include
8 that. It may not include that. I don't recall
9 in this particular case that I was asked whether
10 surgery was necessary or not.

11 Q. Were you asked whether or not any future
12 care would be needed in this case?

13 A. We may have -- that may have come up.

14 Q. Okay. Now, were you also asked to
15 examine Mr. Bauta?

16 A. Yes.

17 Q. And when did you do that?

18 A. On January 19th, 2016.

19 Q. And where did you see him at?

20 A. Right in this office.

21 Q. In this exact room that we are in?

22 A. No. Around the corner.

23 Q. Around the corner. So by "office" you
24 mean this building and this hospital?

25 A. Correct. Right.

Andrew M. Casden, M.D.
2/23/2017

Page 10

1 Q. All right. How long did that
2 examination take?

3 A. Probably about 30 to 45 minutes.

4 Q. How long did you physically examine him?

5 A. Probably 10 minutes.

6 Q. In other cases you testified in the past
7 that your examinations have been five minutes or
8 less, true?

9 MR. MOROKNEK: Objection to form.

10 THE WITNESS: I may have. He may have
11 taken a little longer.

12 BY MR. McELFISH:

13 Q. Why, if you know, did he take a little
14 longer?

15 A. Well, for one thing I said he had
16 difficulty getting up from the chair. He walked
17 with a limp. So it may have taken a few minutes
18 longer or less. Also, depending on how much they
19 are cooperating or not cooperating and listening
20 and understanding what I am asking.

21 Q. Sure. Okay. Now I did note that when
22 you did the examination, you put some notations
23 in your report about what you observed?

24 A. Correct.

25 Q. Okay. And with respect to the -- was it

Andrew M. Casden, M.D.
2/23/2017

Page 11

1 limping you said?

2 A. Yes.

3 Q. Can you describe the limping in terms of
4 what side of the body he was limping on?

5 A. No. I don't recall.

6 Q. Okay. The reason I am asking you is
7 because if you are able to know or remember or if
8 you recorded what side of the body he was limping
9 on when you observed him, my question would be:
10 Did you test that area or that side to see if
11 that limp was real?

12 A. I don't know. I don't recall.

13 Q. Okay. Fair enough.

14 I didn't ask you this at the beginning,
15 but even though you have been only doing expert
16 witness work for seven years, I am aware of a lot
17 of the testimony you have given. My question I
18 suppose is: Can we just dispense with
19 admonitions?

20 A. I don't know what you mean by that.

21 Q. Usually in every deposition of an expert
22 or any witness, for that matter, at the beginning
23 I generally walk through the rules of the
24 deposition. They are called admonitions.

25 A. Oh.

Andrew M. Casden, M.D.
2/23/2017

Page 12

1 Q. And so when I am asking you if we can
2 dispense with them or waive them, I am asking you
3 if I can just bypass them?

4 A. I think so. I mean, I know to answer in
5 words and not expressions, so I guess so. Yeah.

6 Q. Okay. You understand, then, that your
7 deposition here, like the ones I have read from
8 other cases, are under oath?

9 A. Yes.

10 Q. All right. And they can be, as you have
11 seen it happen, they can be used against you in
12 trial and commented upon by the lawyers in the
13 case?

14 A. Correct.

15 Q. All right. So what was -- other than
16 your observation of Mr. Bauta, tell me what you
17 did. Sort of walk through your exam, the exam
18 day with me, if you will.

19 A. The exam day?

20 Q. You know what I mean. From the time he
21 arrived and you started working on him, what did
22 you do?

23 A. Well, he is put in a room. I take a
24 history and ask questions about the accident and
25 about how they feel and their past medical

Andrew M. Casden, M.D.
2/23/2017

Page 13

1 history. Then I examined him. Go through the
2 typical spinal examination, and then from there,
3 usually that's it.

4 Q. Now, with respect to Mr. Bauta, did he
5 tell you anything about any type of medical
6 history relating to his back in terms of any
7 types of prior accidents or injuries or issues
8 like that?

9 A. He did.

10 Q. And what history did he have prior to
11 this accident?

12 A. He said he had none.

13 Q. Okay. And have you been presented with
14 any information to the contrary of that,
15 Dr. Casden?

16 A. No.

17 Q. So as far as you understand here in your
18 deposition today, and I just want to ask it a
19 slightly different way if I can just to nail down
20 that issue.

21 As you sit here today, you are not aware
22 of any prior injuries Mr. Bauta suffered to his
23 spine prior to the bus accident?

24 MR. MOROKNEK: Objection to form.

25 THE WITNESS: Correct.

Andrew M. Casden, M.D.
2/23/2017

Page 14

1 BY MR. McELFISH:

2 Q. Okay. Are you aware of any -- putting
3 accidents aside -- are you aware of any other
4 kinds of events or medical conditions that Mr.
5 Bauta had that related to his lower spine prior
6 to this bus accident in 2013?

7 A. No, I am not.

8 Q. All right. Are you aware of any
9 documentation, for lack of a better term, of any
10 type of complaints or pain in his low back prior
11 to this bus accident in October of 2013?

12 A. No, I am not.

13 Q. All right. And certainly, based on your
14 testimony so far today, if you had received such
15 a record, it would have been something you would
16 have kept and not shredded, true?

17 MR. MOROKNEK: Objection to form.

18 MR. McELFISH: No, let me phrase that.

19 BY MR. McELFISH:

20 Q. If you had received such a record, you
21 would have noted it in your report? Whether you
22 shredded or not is a different --

23 A. Correct.

24 Q. You would have noted it as important?

25 A. Correct.

Andrew M. Casden, M.D.

2/23/2017

Page 15

1 Q. And you noted no such documentation?

2 A. Correct.

3 Q. And did you note in any place -- and I
4 do have your report, so I am going to try not to
5 ask you things I can see from here -- but did you
6 note Mr. Bauta's age at the time that he came to
7 see you?

8 A. Yes. He was 40 years old.

9 Q. And did you note his age at the time of
10 this accident in 2013?

11 A. I didn't specifically note it, but it
12 was about two years earlier, three years earlier,
13 so I guess he was 37.

14 Q. Other than the limp you observed, what
15 else did you observe about him that caught your
16 attention?

17 A. He just walked slowly. His range of
18 motion in the lumbar spine is -- when I asked him
19 to bend forward, was about ten degrees. His
20 bending backwards was about 0 degrees. His neck,
21 he flexed his cervical spine about 40 degrees.
22 Extended 20 degrees. Rotated to the left and the
23 right 20 degrees. He had 5 out of 5 strength;
24 that means full strength in his upper
25 extremities. His right side had full strength.

Andrew M. Casden, M.D.
2/23/2017

Page 16

1 I detected some weakness on the left side, but I
2 thought that was due to a poor effort and not an
3 absolute neurologic deficit.

4 Q. When you say left side, I am sorry to
5 interrupt you.

6 A. Left leg.

7 Q. Left leg.

8 A. Left leg.

9 Q. And what test did you perform that
10 demonstrated the weakness?

11 A. You asked him to resist you to -- a
12 command. So hold your leg out straight, and then
13 you try and bend the knee, for instance.

14 Q. Is that the straight leg raise test?

15 A. No. That's different.

16 Q. What is this one called?

17 A. It's just muscle testing.

18 Q. Okay. And why did you feel that it was
19 related to poor effort?

20 A. You can just get a feel sometimes when
21 you are examining somebody. I have been doing it
22 long enough. It's a subjective test, neurologic
23 testing for motor strength. So it's not an
24 objective finding. So sometimes you can just get
25 that feeling that somebody is not giving you a

Andrew M. Casden, M.D.
2/23/2017

Page 17

1 good effort.

2 Q. Okay. But that's all it is, it's based
3 on your feeling; it's not based on any type of,
4 for instance, test result or --

5 A. No.

6 Q. -- EMG or anything?

7 A. Correct.

8 Q. Okay. What else did you note in the
9 exam?

10 A. He had no long track findings, and his
11 reflexes were one plus but equal and symmetric
12 throughout.

13 Q. What about his right leg?

14 A. His right leg had full strength as well.

15 Q. He wasn't exaggerating the right leg?

16 A. No. Not that I am aware of.

17 Q. Are you aware of whether or not he had
18 surgery?

19 A. Yes, I am.

20 Q. And what surgery did he have?

21 A. He underwent a lumbar laminectomy and a
22 fusion and an instrumentation at L4-L5 and L5-S1.

23 Q. How do you know that?

24 A. From reviewing the medical records.

25 Q. And did you have a chance -- let me not

Andrew M. Casden, M.D.
2/23/2017

Page 18

1 get ahead of my own self.

2 Going back to the exam, did you note the
3 surgical scarring in the areas where the surgery
4 was?

5 A. Yes.

6 Q. And with respect to the forward bend,
7 what do you attribute that to, the 10 degrees?

8 A. Well, I mean, it certainly can be due to
9 pain. It can be due to previous surgery, and it
10 can also be -- it's -- again, it's a subjective
11 test. Somebody can just stop bending at that
12 point and tell me that's all they can do, so I
13 don't have any way of knowing.

14 Q. I know. But you have been doing this
15 even before you did expert witness work for a
16 couple of decades at least. Did you have any --
17 well, more than 20 years you said; we are all
18 doing it more than a couple of decades -- but did
19 you have any sense that when he registered the 10
20 degrees on the forward bend, that he was not
21 giving you full effort?

22 A. I don't recall.

23 Q. Did you note that?

24 A. No, I didn't note it. No.

25 Q. Okay. And same question with respect to

Andrew M. Casden, M.D.
2/23/2017

Page 19

1 the 0 degrees on the backward bend of the lumbar
2 spine?

3 A. Same answer.

4 Q. You don't recall?

5 A. I don't recall. And I didn't note it.

6 Q. All right. And I should ask you this,
7 but the measurements that you took in terms of
8 the degrees, were they just estimates or were
9 they measured by a -- I forgot the term. There
10 is a --

11 A. Goniometer.

12 Q. Goniometer.

13 A. These are estimates. I don't use a
14 goniometer.

15 Q. They were just estimates?

16 A. Correct.

17 Q. What else did you note from the exam?

18 A. I think we covered it.

19 Q. So you did -- let me just see if I have
20 this -- you did the exam. You did the -- a
21 forward test, forward bend test, the backward
22 bend test; you tested the upper extremities and
23 the lower extremities with the muscle resistance
24 test that you described.

25 What else did you physically do?

Andrew M. Casden, M.D.

2/23/2017

Page 20

1 A. His reflexes I checked.

2 Q. Is that with the little hammer?

3 A. With the little hammer, uh-huh.

4 Q. How were those?

5 A. Those were fine. They were a little
6 diminished, but equal and symmetric we call it,
7 so that's a normal finding.

8 Q. And what specifically are you referring
9 to, in the knees?

10 A. The knees, the biceps, the triceps, the
11 brachioradialis, the knees, and the ankles.

12 Q. Okay. What else did you do in the exam?

13 A. We checked the long track findings.

14 Q. What's that?

15 A. Those are signs of pressure on the
16 spinal cord.

17 Q. How do you do that?

18 A. There is a thing called clonus where you
19 push the foot up and scratch the bottom of the
20 foot. There is another one. The reflexes are
21 also signs of long track findings, and then there
22 is one other with the fingers.

23 Q. Okay. Well, the fingers wouldn't relate
24 to the low back?

25 A. Correct.

Andrew M. Casden, M.D.
2/23/2017

Page 21

1 Q. Right. Is the one with the toes that
2 relates to the low back similar to the --

3 A. Yes.

4 Q. Did you do it?

5 A. I don't think so, no.

6 Q. Why not?

7 A. He probably still had his socks on at
8 the time.

9 Q. Did he take the socks off?

10 A. He did, but I didn't do it.

11 Q. And then how did it end? You just -- I
12 don't want to sound like Chuck Woolery, but how
13 did it end? How did the exam end?

14 A. That's it. Cordially, and he left.

15 Q. And what did you do after that that day?
16 Did you record your findings?

17 A. I take notes as I am working with him.

18 Q. Okay. And how did the report get
19 prepared? Did you type that yourself?

20 A. No. I have a dictation service that
21 does it.

22 Q. Okay. Did you dictate the notes into
23 the machine?

24 A. Yes, into the phone.

25 Q. Okay. Did you save that or did you tape

Andrew M. Casden, M.D.
2/23/2017

Page 22

1 over it or what happened?

2 A. I sometimes modify the report as more
3 records become available, but I just call them up
4 and add to it or I make modifications myself.

5 Q. Did you keep the recordings?

6 A. No. I don't get the recordings, either.
7 They are somewhere in the country somewhere.

8 Q. I see. With respect to the report you
9 have here today, what's the date?

10 A. The date on this one is September 28,
11 2016.

12 Q. And the exam was in January?

13 A. Correct.

14 Q. Why is there such a long period of time
15 between the exam and the report?

16 A. I update the date of the report if I
17 review additional records.

18 Q. Did you have any drafts of this report
19 prior to this final report?

20 A. There may have been, but I don't save
21 them.

22 Q. How many were there, do you think?

23 A. Two or three.

24 Q. And why don't you save them?

25 A. I don't think they are of importance.

Andrew M. Casden, M.D.
2/23/2017

Page 23

1 They are updated. It's the new version. It
2 would be a lot of paperwork for me.

3 Q. But the original reports contained your
4 opinions and your findings and your
5 observations --

6 A. Correct.

7 Q. -- as of the time that you prepared
8 those --

9 A. Correct.

10 Q. -- let me just -- sorry. That's one of
11 the admonitions. I will try not -- and I try not
12 to violate this rule, but I will try not to
13 interrupt you, but try not to because she can't
14 type two people. We violated that enough
15 yesterday. We will try not to do that today, and
16 she is mad at me for sure. She has every right.

17 Okay. So but the draft reports that
18 we're referring to, those would contain your
19 opinions and observations and whatever other
20 documentation you had at the time you prepared
21 it?

22 A. Correct.

23 Q. So we don't -- we will not ever know
24 without seeing them what changes were made from
25 the old reports to the current reports?

Andrew M. Casden, M.D.
2/23/2017

Page 24

1 A. Correct.

2 Q. Okay. If we can do this, and I am going
3 to try not to do this for any reason other than I
4 want to ask you about these particular documents.

5 What documents did you find important in
6 this case?

7 A. I saw the emergency room records from
8 Evangelical Community Hospital; I looked at the
9 records of Brookdale Hospital; Dr. Alladin's
10 notes; Dr. Rosenberg's notes; Dr. Demetrios
11 Mikelis's notes; Dr. Cordiale's notes. I believe
12 in addition to that I had the notes by Franklin
13 General Hospital from the surgery, and then I
14 reviewed some of the radiologic studies that were
15 done.

16 Q. Okay. Now, with respect to when you say
17 Dr. Alladin's notes, are you referring to his
18 reports?

19 A. His office notes, it would be.

20 Q. Okay. And with respect to Dr. Mikelis,
21 are you referring to the report he generated in
22 the case or something else?

23 A. It's usually the office notes.

24 Q. Same with Dr. Cordiale?

25 A. Correct.

Andrew M. Casden, M.D.
2/23/2017

Page 25

1 Q. So you didn't see any of the reports
2 from Dr. Cordiale or Mikelis or Alladin?

3 MR. MOROKNEK: Objection to form.
4 Objection to form. Yes, he did, but he
5 testified.

6 MR. McELFISH: We are not starting
7 again, are we?

8 MR. MOROKNEK: I don't know.

9 MR. BARMEN: Proceed.

10 MR. McELFISH: It's a pretty simple
11 question. What's the objection?

12 MR. BARMEN: Should he take the Fifth?

13 MR. MOROKNEK: Not yet.

14 MR. McELFISH: What is the objection?
15 Read the question back, would you
16 please?

17 (Record read.)

18 THE WITNESS: I don't recall seeing
19 their actual reports. I just recall seeing
20 -- having the notes in my records.

21 BY MR. McELFISH:

22 Q. Okay. What about Dr. Capiola? Did you
23 see his records?

24 A. I may have. I don't recall.

25 Q. Did you see Dr. Rosenberg's records?

Andrew M. Casden, M.D.

2/23/2017

Page 26

1 A. Yes.

2 Q. How about Dr. Chen? Did you see
3 Dr. Chen's records?

4 A. Not that I am aware of.

5 Q. Did you see Dr. Lichy's records?

6 A. Not that I am aware of.

7 Q. Dr. Kolb?

8 A. Not that I am aware.

9 Q. What about Dr. Winn?

10 A. Not that I am aware of. Wait a second.
11 You know, I don't recall if I saw his records or
12 those of the Alladin's where they reference
13 Winn's notes, but I may have. But I have some
14 references as to what Dr. Winn did.

15 Q. Did you see the operative reports for
16 Dr. Winn?

17 A. I believe I did, yes.

18 Q. Did you note them in your report?

19 A. I did.

20 Q. Let me ask you this: Is the scope of
21 your testimony in this case related to the spinal
22 injuries or the head injuries or just the spinal?

23 A. Just the spinal injuries.

24 Q. So you are not interested in the
25 neuropsychologist and the psychology and the

Andrew M. Casden, M.D.
2/23/2017

Page 27

1 psychology notes and records?

2 A. Correct.

3 Q. Okay. Now, you were talking about some
4 of the radiological studies. Can you be specific
5 with me about which studies you saw?

6 A. Sure. I saw the CT scan of the cervical
7 spine dated October 9, 2013; the MRI of the
8 lumbar spine dated November 28th, 2013; MRI
9 cervical spine dated November 8th, 2013; MRI of
10 the lumbar spine dated February 11, 2015;
11 radiographs of the cervical and lumbar spine
12 dated October 25th, 2013.

13 Q. I am sorry. The last one is radiographs
14 of what?

15 A. The cervical and the lumbar spine dated
16 October 25th, 2013.

17 Q. Now, when we are talking about the dates
18 of these studies, did you just see the reports or
19 did you actually see the studies?

20 A. I saw the studies.

21 Q. Do you have them with you today?

22 A. I do not.

23 Q. Is there a way you can get them? Is
24 this -- do you have a board --

25 MR. MOROKNEK: A box?

Andrew M. Casden, M.D.
2/23/2017

Page 28

1 BY MR. McELFISH:

2 Q. Do you have a light box we could look at
3 the studies?

4 A. We would have to go into another room.

5 Q. Do you have the studies here at the
6 hospital?

7 A. No.

8 Q. So we would be looking at a light box
9 with no studies if we did that?

10 A. Unless you have them, correct.

11 Q. No, I don't. All right. What was
12 the --

13 MR. BARMEN: There's a nice white box.

14 It's very nice. It's worth seeing. We'll
15 show you on the way out.

16 BY MR. McELFISH:

17 Q. What was it that you noted from the
18 radiographs from October of '13? What was
19 important to you about them?

20 A. The X-rays taken on October 25th, 2013,
21 I saw a retrolisthesis it's called of L5 and S1.
22 There was no evidence of any fractures, and there
23 were degenerative changes at L5-S1.

24 Q. So a retrolisthesis, tell me what that
25 is.

Andrew M. Casden, M.D.
2/23/2017

Page 29

1 A. That's a little bit of one vertebra has
2 slipped behind the other vertebra, it goes
3 backwards a little bit.

4 Q. In general, are those degenerative or
5 traumatic?

6 A. They are traumatic. Excuse me.
7 Degenerative.

8 Q. And generally you say they are
9 degenerative?

10 A. They are degenerative, yes.

11 Q. They are never traumatic?

12 A. I have never seen one, no.

13 Q. Have you ever read about one or heard
14 about one?

15 A. Not this type, no.

16 Q. Okay. And what level is that, L4-5?

17 A. L5-S1.

18 Q. Does that relate to your opinions in any
19 way in this case?

20 A. Yes.

21 Q. How?

22 A. I don't think there was any evidence of
23 an injury to the bony structure of the spine at
24 the time of the accident.

25 Q. By bony structure, what do you mean?

Andrew M. Casden, M.D.
2/23/2017

Page 30

1 A. Well, the X-rays show you that there is
2 no fractures, no dislocations to the spine.

3 Q. None are being claimed. No bony -- no
4 fractures of the spine, right?

5 A. Not that I know of, no.

6 Q. All right. You mentioned the studies
7 from -- well, there were two sets. There was a
8 set of the neck and back in '13. Then there was
9 just the back in '15, the MRIs?

10 A. Correct.

11 Q. Right? In the 2013 MRI, did you see the
12 large herniation that was noted?

13 MR. MOROKNEK: Objection to form.

14 THE WITNESS: I saw a herniation on the
15 left side with a large disk herniation
16 towards the left side at L5-S1.

17 BY MR. McELFISH:

18 Q. Did you measure it?

19 A. No.

20 Q. Do you have an estimate of how large it
21 is?

22 A. No.

23 Q. Were you able to look at, since you
24 looked at the films, were you ever able to look
25 at the hydration of that disc?

Andrew M. Casden, M.D.
2/23/2017

Page 31

1 A. You look at the hydration of the disc.
2 I never looked at the hydration, nor can I
3 comment on the hydration of a herniation.

4 Q. Okay. Was it hydrated or dehydrated?

5 A. I don't recall, but again, it's not
6 something I ever report on.

7 Q. As an orthopedic surgeon, certainly you
8 receive reports from radiologists about MRIs,
9 true?

10 A. True.

11 Q. But you also look at those films on
12 people you are operating on before you do the
13 operations?

14 A. True.

15 Q. All right. So you have some experience
16 in looking at MRI films?

17 A. True.

18 Q. Okay. Now, you understand what I mean
19 when I say a hydrated disc or a dehydrated disc?

20 A. Yes.

21 Q. Tell me what that is.

22 A. Well, a hydrated disc has a certain
23 signal characteristics on an MRI, and a
24 dehydrated disc has other signal characteristics.
25 The size and the height of the disc can also

Andrew M. Casden, M.D.

2/23/2017

Page 32

1 change. The look of the disc can change.

2 Q. All right. So I want to ask you about
3 that, and let's start with the lumbar films in
4 2013. Were you able to make any comparisons
5 between the L5-S1 level and the other levels as
6 to their hydration qualities?

7 A. The -- not in my report, so I don't
8 recall.

9 Q. If it's not in your report, you didn't
10 do it? Can you say that?

11 A. No. I am just saying that I don't
12 specifically have in my report that there were
13 degenerative changes at L5-S1. Although I think
14 there were.

15 Q. What I am trying to get at, though, is,
16 you know, you examined Mr. Bauta over a year
17 ago --

18 A. Right.

19 Q. You wrote the report over six months
20 ago?

21 A. Correct.

22 Q. Today is your deposition, and I wanted
23 to get sort of a final opinion from you if I
24 could --

25 A. Sure.

Andrew M. Casden, M.D.
2/23/2017

Page 33

1 Q. -- on the question of whether or not you
2 observed hydration or dehydration at the
3 herniated disc at L5-S1?

4 A. There were degenerative changes noted,
5 correct.

6 Q. Well, when you say degenerative changes,
7 can you be specific with me about what you are
8 talking about?

9 A. Retrolisthesis is a sign of degenerative
10 changes. That's one. Degeneration of the disc
11 is another sign of degenerative changes, and
12 those are the ones that we are looking at
13 primarily.

14 Q. But I want to go back to my question,
15 which was: Did you have an opportunity to
16 observe whether or not the L5-S1 disc was
17 hydrated or not?

18 A. Yes.

19 Q. Was it?

20 A. No.

21 Q. It lost its hydration?

22 A. Correct.

23 Q. Were you able to make any comparisons
24 between that disc at L5-S1 and the other levels
25 of the lumbar spine?

Andrew M. Casden, M.D.
2/23/2017

Page 34

1 A. Yes. The other ones were more normal-
2 looking levels.

3 Q. And they were hydrated?

4 A. Correct.

5 Q. And you know that from looking at it and
6 the signal, the intensity of the signal?

7 A. Correct.

8 Q. So with respect to -- have you seen
9 Dr. Mobin's report?

10 A. I did.

11 Q. Do you agree with him in that regard?

12 A. You are going to have to remind me what
13 he said.

14 Q. Just that, that the L5-S1 disc had no
15 hydration, and that the other levels, by
16 comparison, were hydrated and normal.

17 A. I would agree with that.

18 Q. Thank you.

19 You did you see his deposition,
20 Dr. Mobin?

21 A. I looked at it, yes.

22 Q. Did you see the exhibits to it?

23 A. The exhibits? Not that I recall, no.

24 Q. Well, the reason I am asking you, and
25 maybe this will help refresh your recollection

Andrew M. Casden, M.D.
2/23/2017

Page 35

1 is, Dr. Mobin had printed out a picture of the --
2 at the sagittal and the axial views of the lumbar
3 spine at that level --

4 A. Uh-huh.

5 Q. -- and he put a measurement on the film.

6 A. Uh-huh.

7 Q. Did you get a chance to see that?

8 A. No.

9 Q. Because I was going to ask you if you
10 agreed or disagreed?

11 A. I did not see that.

12 Q. Fair enough.

13 Okay. Now while we are on the subject
14 with respect to the 2013 lumbar film, did you see
15 any other abnormalities on that film?

16 A. There was a central and left-sided disc
17 herniation.

18 Q. So when you say central, you are
19 referring to the herniation that is not lateral,
20 but it's in the middle where the spinal canal
21 was?

22 A. Correct.

23 Q. And to the extent of its herniation or
24 its protrusion, if you will -- because a
25 herniation can protrude, true?

Andrew M. Casden, M.D.
2/23/2017

Page 36

1 MR. MOROKNEK: Form.

2 THE WITNESS: That's not how I generally
3 look at it.

4 BY MR. McELFISH:

5 Q. Let me rephrase.

6 A. Sure.

7 Q. Sorry. It was a terrible question.

8 With respect to this film and disc
9 herniation at L5-S1, is there a way for you, sir,
10 to describe the direction in which it was
11 protruding or where it had extruded its material?

12 A. Yes.

13 Q. Which way?

14 A. To the left.

15 Q. So none of the extrusion was to the
16 right?

17 A. No.

18 Q. None was to the back or posterior to the
19 front?

20 A. I don't follow you.

21 Q. So the disc can extrude to the front or
22 to the back or left or to the right, true?

23 A. We don't think of disc herniations to
24 the front. You mean anteriorly to the spine?

25 Q. Anteriorly. True.

Andrew M. Casden, M.D.
2/23/2017

Page 37

1 A. We don't look at disc herniations as
2 herniations anteriorly. It's not a recognized
3 finding.

4 Q. Fair. Did you observe any thecal sac --
5 any thecal sac impression on that film?

6 A. Yes.

7 Q. And what was it?

8 A. It encroached centrally on the thecal
9 sac, and then it contacted the S1 nerve root.

10 Q. On what side?

11 A. On the left side.

12 Q. But the central herniation or the
13 central compression was where?

14 A. Centrally.

15 Q. Okay. And can the central compression
16 cause right or left-sided weakness?

17 MR. MOROKNEK: Objection to form.

18 THE WITNESS: No, it should not.

19 BY MR. McELFISH:

20 Q. Can it?

21 MR. MOROKNEK: Objection to form.

22 THE WITNESS: No.

23 BY MR. McELFISH:

24 Q. So if you -- putting aside a minute the
25 extrusion to the left -- if he had compression to

Andrew M. Casden, M.D.

2/23/2017

Page 38

1 the central canal, that cannot cause right-sided
2 weakness?

3 A. No. Not at L5-S1.

4 Q. Okay. Now, with respect to -- was there
5 any lateral stenosis with respect --

6 A. There was some foraminal stenosis.

7 Q. And at what level?

8 A. L5-S1.

9 Q. And how did that compare to the other
10 levels?

11 A. That was more significant.

12 Q. And was there compression in the
13 foramina?

14 A. There was compression in the
15 neuroforamen, yes.

16 Q. On the right side?

17 A. It was on the left and the right side.

18 Q. And right-sided compression in the
19 foramina can cause right-sided weakness?

20 MR. MOROKNEK: Objection to form.

21 THE WITNESS: Yes, it can.

22 BY MR. McELFISH:

23 Q. And specifically, if you can tell me,
24 which -- which level of the foramen causes
25 numbness and weakness into the right leg?

Andrew M. Casden, M.D.
2/23/2017

Page 39

1 A. It could be L4, L5, S1.

2 Q. All right. And that can -- that can
3 come to the form of radiation into the buttocks
4 or groin, true?

5 A. Not into the groin, but into the
6 buttocks.

7 Q. All right. What about the quad?

8 A. Quad would be more at L4.

9 Q. All right. Did you note in some of
10 Dr. -- did you have Dr. Gutstein's records?

11 A. Yes.

12 Q. Did you note in his early records that
13 there was a finding of weakness in Mr. Bauta's
14 right quad?

15 MR. MOROKNEK: Objection to form.

16 THE WITNESS: I don't recall.

17 BY MR. McELFISH:

18 Q. But if there was an injury to the L4-5
19 in the foramen or a compression in the foramen,
20 that would explain the weakness in the quad?

21 A. I don't think we established compression
22 at L4-L5 of the L4 nerve.

23 Q. All right. So you think the compression
24 was only L5-S1?

25 A. Correct.

Andrew M. Casden, M.D.
2/23/2017

Page 40

1 Q. Where would the L5-S1 reveal itself in
2 terms of its radicular --

3 A. Usually that's either gastroc weakness,
4 or lifting up the toe. We call it EHL weakness.

5 Q. What about weakness down the leg and,
6 you know, like you described earlier when Mr.
7 Bauta was walking, he was walking with a limp;
8 could an L5-S1 compression laterally in the
9 foramina cause that type of weakness?

10 A. It could.

11 Q. So when you have compression in this
12 case, for instance, at the L5-S1 on the right
13 side and the foramen --

14 A. Uh-huh.

15 Q. -- that could be causing the injured --
16 that could be causing the weakness rather than
17 the extrusion which may be to the left?

18 MR. MOROKNEK: Objection to form.

19 THE WITNESS: That's not --

20 BY MR. McELFISH:

21 Q. Let me rephrase.

22 A. Yes.

23 Q. Sorry. If the extruding material is to
24 the left and the -- centrally -- and if the
25 compression inside the foramen is to the right,

Andrew M. Casden, M.D.

2/23/2017

Page 41

1 then you could actually look at it and say, well,
2 the left-sided extrusion is not causing the
3 right-sided weakness, but the right-sided
4 compression is causing it?

5 MR. MOROKNEK: Form.

6 THE WITNESS: You could and you would,
7 yes.

8 BY MR. McELFISH:

9 Q. You could, and you would?

10 A. Yes.

11 Q. In other words, that makes medical
12 sense? It makes logical --

13 A. Yeah, it wasn't said very well, but it
14 makes sense.

15 Q. It's never going to be for me. I
16 apologize. When I get to medical school, I will
17 do better.

18 So you did have -- you did say you had
19 Dr. Gutstein's records, but I didn't hear you say
20 that when you read off the list.

21 A. I read them. I have seen them
22 subsequently more recently, but they are not in
23 my report.

24 Q. They are not?

25 A. Correct.

Andrew M. Casden, M.D.
2/23/2017

Page 42

1 Q. And what did you note from Dr.
2 Gutstein's records that, if it's not in your
3 report, what do you recollect about it?

4 A. I don't recall it offhand.

5 Q. So I am assuming if you didn't update
6 your report, and you don't -- and you don't know
7 what they said, it wasn't important?

8 MR. MOROKNEK: Objection to form.

9 THE WITNESS: I don't know if they were
10 important. I just didn't update my report
11 after that as I saw those.

12 BY MR. McELFISH:

13 Q. But that's what I am trying to find out.
14 So you have a report --

15 A. Correct.

16 Q. -- and then you have Dr. Gutstein's
17 records?

18 A. Correct.

19 Q. And then you shredded Dr. Gutstein's
20 records?

21 A. Correct.

22 Q. And you did not update your report?

23 A. Correct.

24 Q. Okay.

25 MR. MOROKNEK: Objection to form.

Andrew M. Casden, M.D.
2/23/2017

Page 43

1 BY MR. McELFISH:

2 Q. Now, going back to the films for a
3 minute, just so we can clean up the lumbar films
4 in 2013. Was there anything else that you noted
5 on the film either of a traumatic nature or a
6 degenerative nature?

7 A. Not of a traumatic nature, no, and just
8 bulging of the disc at 2-3, 3-4 and 4-5.

9 Q. Okay. But those bulges were out of
10 proportion to the herniation at L5-S1?

11 MR. MOROKNEK: Objection to form.

12 BY MR. McELFISH:

13 Q. Were those bulges out of proportion to
14 the herniation at L5-S1?

15 MR. MOROKNEK: Objection to form only
16 because I am not sure what you mean by "out
17 of proportion."

18 THE WITNESS: Do you mean larger out of
19 proportion?

20 Q. Smaller out of proportion.

21 In other words, was the L5-S1 herniation
22 out of proportion in terms of its size compared
23 to the protrusions at L2, L3 and L4?

24 MR. MOROKNEK: Objection to form.

25 You can answer.

Andrew M. Casden, M.D.
2/23/2017

Page 44

1 THE WITNESS: Assuming you mean larger,
2 yes.

3 BY MR. McELFISH:

4 Q. So they were larger?

5 A. No, L5-S1 was larger.

6 Q. That's what I meant.

7 A. Yes.

8 Q. Okay. Much larger?

9 MR. MOROKNEK: Objection to form.

10 THE WITNESS: Larger.

11 BY MR. McELFISH:

12 Q. With respect to the right-sided
13 compression that we have been discussing in the
14 L4-L5 or the L5 -- the L5-S1 foramina, did you
15 note nerve root impingement?

16 A. Yes.

17 Q. And is there a way for you to quantify
18 it?

19 A. No.

20 Q. Okay. Have you ever seen any signs or
21 any papers written on how a traumatic event can
22 increase symptoms in a nerve root that's
23 compressed?

24 A. No.

25 MR. MOROKNEK: Objection to form.

Andrew M. Casden, M.D.
2/23/2017

Page 45

1 You can answer.

2 BY MR. McELFISH:

3 Q. No?

4 A. No papers on it, no.

5 Q. Have you ever heard of it happening?

6 A. It could.

7 Q. It could?

8 A. Uh-huh.

9 Q. How about the records of Vincent Vasile?

10 Did you have those?

11 A. I don't recall. No. I don't recall.

12 Q. Okay. Now, earlier I asked you whether
13 you were going to opine on the head or the back,
14 and you said the back. I just had one more
15 follow-up question in that regard in terms of
16 scope.

17 A. Uh-huh.

18 Q. You have seen in the records that Mr.
19 Bauta had a knee injury in this accident?

20 A. I probably did, yes.

21 Q. Do you have any opinion as to whether or
22 not the knee injury was causally related to this
23 accident?

24 A. I don't have any opinion on that.

25 Q. You were not asked to review that?

Andrew M. Casden, M.D.

2/23/2017

Page 46

1 A. No. No.

2 Q. Now, given the number of records that
3 you did look at that we have talked about, would
4 you say that Mr. Bauta's -- in terms of the
5 course and scope of his treatment, would you say
6 it was consistent?

7 MR. MOROKNEK: Objection to form.

8 MR. McELFISH: Let me rephrase.

9 Can you not object on every question?
10 Honestly, it's really distracting.

11 MR. MOROKNEK: Ray, the ones that are
12 not objectionable --

13 MR. McELFISH: They don't make any
14 sense.

15 MR. BARMEN: Just ask a question.

16 MR. MOROKNEK: Your questions don't make
17 sense.

18 MR. McELFISH: But it's distracting.

19 MR. MOROKNEK: That's why I'm objecting.

20 MR. BARMEN: That's kind of the job we
21 chose. Just ask your questions.

22 MR. MOROKNEK: This is ridiculous.

23 MR. McELFISH: When you don't know what
24 it is, the objections don't make sense.
25 They don't make sense.

Andrew M. Casden, M.D.
2/23/2017

Page 47

1 MR. MOROKNEK: Okay. Okay.

2 MR. BARMEN: Don't start. There is no
3 need. Get through it. Get this man out of
4 here, and don't start your shenanigans.

5 MR. McELFISH: Don't talk to me like
6 that.

7 MR. BARMEN: Shenanigans.

8 MR. McELFISH: Seriously.

9 MR. BARMEN: Shenanigans.

10 MR. MOROKNEK: You like that word.

11 MR. BARMEN: I do. I like that word.

12 Continue.

13 BY MR. McELFISH:

14 Q. Were Mr. Bauta's complaints consistent
15 with regard to his low back? Were they
16 consistent from the time of the accident
17 throughout --

18 MR. MOROKNEK: Objection.

19 MR. McELFISH: I am not even done with
20 the question.

21 MR. MOROKNEK: I thought you were.

22 MR. McELFISH: Brad, stop honestly.

23 MR. BARMEN: Stop? Stop what?

24 MR. McELFISH: Stop.

25 MR. BARMEN: Stop your shenanigans.

Andrew M. Casden, M.D.
2/23/2017

Page 48

1 MR. McELFISH: Knock it off, dude.

2 MR. BARMEN: Shenanigans.

3 MR. McELFISH: Can we go off the record?

4 (Recess taken.)

5 MR. MOROKNEK: Let the record reflect
6 Mr. McElfish went in the hallway and got in
7 Mr. Barmen's face, okay, and threatened him
8 with physical violence.

9 MR. McELFISH: No, I did not.

10 MR. MOROKNEK: He said, and I quote --

11 MR. McELFISH: You said, "Do you want to
12 go outside?"

13 MR. MOROKNEK: -- "I am going to F you
14 up."

15 MR. McELFISH: I did not. I did not. I
16 did not.

17 MR. MOROKNEK: That's what I heard.

18 MR. McELFISH: Did not.

19 MR. BARMEN: Multiple times.

20 MR. MOROKNEK: So having said that, I
21 think at this point we are going to stop the
22 deposition. I am not going to subject the
23 doctor to this any further.

24 MR. McELFISH: There is no subjecting
25 the doctor.

Andrew M. Casden, M.D.
2/23/2017

Page 49

1 MR. MOROKNEK: If Mr. McElfish wants the
2 deposition of the doctor, again, he can make
3 an application to the Court, and he will get
4 it, but as of now, this deposition is over.

5 MR. McELFISH: I would like to finish
6 this deposition.

7 MR. MOROKNEK: Well, guess what? It's
8 not happening.

9 MR. McELFISH: Let's go. Guys.

10 MR. MOROKNEK: You think I am kidding,
11 dude. I am not kidding. You are not going
12 to threaten him with physical harm and
13 expect to depose my witness.

14 MR. McELFISH: I asked him to stop it.

15 MR. MOROKNEK: You're a two-year-old,
16 Ray. I am making an objection, and you say
17 it interrupts you?

18 MR. McELFISH: I asked him to stop it.

19 MR. MOROKNEK: I am done.

20 Doctor, thank you. I appreciate your
21 time today.

22 THE WITNESS: Thank you.

23 MR. McELFISH: Well --

24 THE WITNESS: I can't continue without
25 them.

Andrew M. Casden, M.D.

2/23/2017

Page 50

1 MR. McELFISH: I understand. Are you
2 able to continue? We are here to do this,
3 guys.

4 MR. MOROKNEK: We are here to behave as
5 professionals, not to threaten --

6 MR. McELFISH: You are not going to
7 threaten me.

8 MR. MOROKNEK: This is not a threat.
9 This is we are doing.

10 MR. McELFISH: Let's get the judge on
11 the phone now since we're all here.

12 MR. MOROKNEK: Knock yourself out.

13 MR. McELFISH: Honestly, you do have
14 stop it, bro. I'm telling you.

15 MR. MOROKNEK: Let's go.

16 MR. McELFISH: Let's finish this
17 deposition so we don't have to come back.

18 MR. MOROKNEK: Come with me. I will not
19 listen. You will not be treated this way.

20 MR. McELFISH: Harold, let's finish the
21 deposition.

22 (Recess taken.)

23 MR. BARMEN: Let's go on the record.

24 MR. McELFISH: Why don't you make a
25 statement about this?

Andrew M. Casden, M.D.
2/23/2017

Page 51

1 MR. MOROKNEK: I will.

2 MR. McELFISH: Because I have the Court
3 coming onto the line. I would actually like
4 to make it first.

5 First of all, no more staring. No more
6 games. Enough, guys. You are doing it now.

7 You and I will deal with it afterwards.

8 MR. BARMEN: We will.

9 MR. McELFISH: We will.

10 MR. BARMEN: You are going to threaten
11 me again with shenanigans?

12 MR. McELFISH: You and I will go outside
13 and discuss it.

14 MR. MOROKNEK: What are you saying?

15 MR. McELFISH: We are going to discuss
16 it.

17 MR. BARMEN: Raymond, who are you going
18 to call and tell on me this time?

19 MR. McELFISH: You have no idea, dude.

20 MR. BARMEN: Oh, I don't. That sounds
21 like another threat.

22 MR. McELFISH: Can you get just rid of
23 him?

24 MR. BARMEN: Sounds like another threat.

25 MR. McELFISH: I am going to ask the

Andrew M. Casden, M.D.
2/23/2017

Page 52

1 judge to have you off this case. I'm
2 telling you. This is ridiculous.

3 MR. BARMEN: I say, good luck with that.

4 MR. McELFISH: I tell you what, let's
5 call Tom.

6 MR. BARMEN: Go ahead.

7 MR. MOROKNEK: Let's do it.

8 MR. McELFISH: No, no. I'm doing it.

9 MR. MOROKNEK: You can do whatever you
10 want. You have got two minutes to start
11 this deposition again --

12 MR. McELFISH: No, no. I am waiting on
13 the judge before I start.

14 MR. MOROKNEK: You really called the
15 judge?

16 MR. McELFISH: I did. He is calling
17 back.

18 MR. MOROKNEK: Good.

19 MR. McELFISH: Doctor, you may want to
20 just step out for this if you don't mind.
21 Just for a few minutes. I apologize.

22 MR. MOROKNEK: How does he get around
23 the fact that he physically threatened you?

24 MR. BARMEN: He heard it, too.

25 MR. MOROKNEK: The doctor heard it, his

Andrew M. Casden, M.D.
2/23/2017

Page 53

1 whole staff heard it. That's harassment.

2 MR. McELFISH: You said, do you want to
3 go outside and fight. That's what you said.

4 MR. BARMEN: After you said you were
5 going to fuck me up.

6 MR. MOROKNEK: Three times.

7 MR. McELFISH: I have had enough of you,
8 dude.

9 MR. BARMEN: The world according to Ray.

10 MR. McELFISH: I've had enough.

11 MR. BARMEN: I don't care.

12 MR. MOROKNEK: So you don't want to do
13 the deposition anymore?

14 Do you want to do the deposition or not?

15 MR. McELFISH: I want to talk to the
16 judge first.

17 MR. MOROKNEK: And you called the judge
18 and he is calling back?

19 MR. McELFISH: Yup.

20 MR. MOROKNEK: Do you have that on the
21 record?

22 MR. McELFISH: No. I called. You
23 weren't here. I don't go on the record when
24 you are not here.

25 MR. BARMEN: So you just made an ex

Andrew M. Casden, M.D.
2/23/2017

Page 54

1 parte call to the Court?

2 MR. McELFISH: To the clerk.

3 MR. MOROKNEK: You said you called the
4 Court.

5 MR. McELFISH: Clerk.

6 MR. MOROKNEK: You called the Court,
7 right?

8 MR. McELFISH: So what?

9 MR. MOROKNEK: Without us.

10 MR. McELFISH: Yes, Tom, this is Ray.
11 We have a little problem. Can you call me
12 back, please? Thank you.

13 (The following is a phone call.)

14 MR. McELFISH: Hello?

15 UNIDENTIFIED SPEAKER: Hi, Mr. McElfish?

16 MR. McELFISH: Yes.

17 UNIDENTIFIED SPEAKER: Hi. I have just
18 patched the judge in. Is everyone still
19 available?

20 MR. McELFISH: We are here. We are
21 ready.

22 UNIDENTIFIED SPEAKER: Before I patch
23 you in, who else is on the line?

24 MR. MOROKNEK: Harold Moroknek and
25 Bradley Barmen.

Andrew M. Casden, M.D.
2/23/2017

Page 55

1 UNIDENTIFIED SPEAKER: Okay, guys. Hang
2 on one second. I will put you on hold, and
3 then I will patch the judge through.

4 MR. MOROKNEK: This is crazy.

5 MR. McELFISH: It is crazy, but this is
6 the way it's going to be.

7 MR. MOROKNEK: He can be arrested for
8 what he said to you.

9 MR. McELFISH: Great.

10 MR. MOROKNEK: Do you realize that.

11 MR. BARMEN: Technically, it is an
12 assault.

13 MR. MOROKNEK: No technically -- not
14 assault. It's harassment, which is a B
15 misdemeanor.

16 MR. McELFISH: He said the same thing to
17 me, Harold.

18 MR. BARMEN: I did?

19 MR. McELFISH: Yes.

20 MR. BARMEN: God, you just lie and lie
21 and lie.

22 MR. McELFISH: Okay, buddy.

23 MR. BARMEN: The problem is there are
24 witnesses.

25 UNIDENTIFIED SPEAKER: This is telephone

Andrew M. Casden, M.D.
2/23/2017

Page 56

1 conference in Bauta versus Greyhound Lines,
2 Inc., et al. Docket number 14-cv-3725.

3 Counsel for the plaintiff, please
4 identify yourself for the record.

5 MR. McELFISH: Raymond McElfish,
6 attorney for Bauta.

7 UNIDENTIFIED SPEAKER: And counsel for
8 the defendants identify yourselves for the
9 record.

10 MR. MOROKNEK: Harold Moroknek and
11 Bradley Barmen.

12 MR. BARMEN: And we also, for the
13 record, have Dr. Casden in the room as well
14 as our court reporter.

15 THE COURT: Okay. What's the problem?

16 MR. McELFISH: Good afternoon, Judge.
17 This is Ray McElfish calling. I was
18 reluctant to call you, but I want to tell
19 you what this is. I apologize for doing
20 this to begin with.

21 I am trying to take the deposition of
22 Dr. Casden, and counsel for the defendant,
23 Mr. Barmen, is -- been intimidating me in
24 this room and staring at me, and
25 Mr. Moroknek -- they like gang up on me in a

Andrew M. Casden, M.D.
2/23/2017

Page 57

1 way, and I don't mean to sound like that,
2 but it really is enough at every single
3 deposition. Everybody is laughing at me
4 right now.

5 MR. MOROKNEK: Including the doctor,
6 Judge.

7 MR. McELFISH: Including the doctor. We
8 went outside. Mr. Barmen asked me if I
9 wanted to take it outside, and I said some
10 things I shouldn't have said. Mr. Moroknek
11 then terminated the deposition.

12 The real reason I am calling you is, I
13 am tired of being harassed, Your Honor. I
14 am tired of this, and I am just trying to
15 get this gentleman who -- the doctor has
16 been a gentleman. I'm trying to get his
17 deposition done without these guys doing
18 this.

19 I don't know what else to do, but this
20 was really about the termination because --
21 and since I called your chambers to ask for
22 a conference, they have come back in the
23 room now; but I would like some direction.
24 They are going to tell you lies about what I
25 said, and it's not true.

Andrew M. Casden, M.D.
2/23/2017

Page 58

1 MR. MOROKNEK: He is unbelievable.

2 MR. BARMEN: Your Honor --

3 MR. MOROKNEK: No, let me go first. I
4 want to go first because he is pathological,
5 and it needs to be stopped immediately.

6 Your Honor, this is Harold Moroknek, and
7 I apologize for this phone call. I am going
8 to give the facts as best I can.

9 MR. McELFISH: From my phone.

10 MR. MOROKNEK: Mr. -- Mr. McElfish was
11 asking questions, some of them I found
12 objectionable as to form, and I voiced my
13 objection.

14 With due respect, and you can see the
15 record on that, Your Honor, Mr. McElfish
16 takes offense when anyone objects or
17 questions anything he ever asks, so he took
18 offense to my objection. Told me not to
19 object. He is -- as I tell my daughters --
20 he is a bully, Judge. It's just that
21 simple, and it has come out in this case to
22 a point where it's amazing to me what's
23 going on here.

24 He and Mr. Barmen then had communication
25 about the objection, about the questioning.

Andrew M. Casden, M.D.

2/23/2017

Page 59

1 The two of them did go outside.

2 Mr. McElfish physically threatened
3 Mr. Barmen outside where the doctor's staff
4 sits and exists in an active medical
5 practice. It's amazing to me that he gets
6 on the phone and says the things that he has
7 said to you, Judge. I am amazed by the
8 entire thing.

9 Did I come back and say the deposition
10 is over? Yes, I did. I had a doctor who
11 told me that he feels uncomfortable; that
12 Mr. McElfish made him feel uncomfortable;
13 and, quite frankly, he physically threatened
14 Mr. Barmen.

15 So I did not feel that this was an
16 appropriate way to proceed.

17 We did speak with the doctor and
18 Mr. Barmen, you know, a little bit after
19 that, and we decided we would give
20 Mr. McElfish one final chance to behave
21 himself, and that's where we are right now.

22 MR. BARMEN: And, Judge, this is
23 Mr. Barmen. I have never, frankly,
24 experienced anything in a professional
25 setting like what just happened.

Andrew M. Casden, M.D.**2/23/2017**

Page 60

1 Mr. McElfish not only threatened me, he
2 did so in a very aggressive manner loudly in
3 front of the doctor and several other
4 witnesses. What he told you is simply
5 untrue. Again, there are witnesses,
6 including the doctor, who is here. I said,
7 "Let's go outside" because he was causing a
8 scene in the doctor's office.

9 So, you know, for him to call you and
10 say that -- say that somehow we are
11 harassing him, it's just part and parcel of
12 what we are being -- what we have been
13 dealing with, but it's absolutely
14 inappropriate, unprofessional and like
15 nothing I have ever seen before.

16 MR. McELFISH: Well, my brief response
17 to that is, is that they are teaming up, and
18 they are lying, and I am sorry, but I am
19 trying to get through a deposition with an
20 expert; and the real reason I called you,
21 even though they claim I said and did these
22 things, which is not true, is because I was
23 trying to avoid the termination and us
24 coming back from other cities and having to
25 reschedule this gentleman. That's really

Andrew M. Casden, M.D.
2/23/2017

Page 61

1 it.

2 Now, if they want to go on and on about
3 things I didn't do, that's what they have
4 been doing. I don't care as much about
5 that. I am more grown up than that, but I
6 really do want to make sure that this
7 deposition does get concluded.

8 THE COURT: All right. You are going to
9 conclude the deposition?

10 MR. McELFISH: I just don't know if it's
11 going to continue. I mean, it is --

12 MR. MOROKNEK: Judge, very, very --

13 MR. McELFISH: It is obstructionist. It
14 is obstructionist.

15 THE COURT: Mr. Moroknek, you are going
16 to let it go forward, right?

17 MR. MOROKNEK: Judge, certainly. And
18 here is what we are going to do: I came
19 back in and I told Mr. McElfish, not-
20 withstanding his behavior, we would give him
21 one final chance. He will not direct who to
22 object and who not to object. If I have --
23 if I find his questions objectionable, which
24 many of them are --

25 THE COURT: I will say this: The

Andrew M. Casden, M.D.
2/23/2017

Page 62

1 deposition is going to continue. One
2 counsel makes objections.

3 MR. MOROKNEK: And that's the way it's
4 been, Your Honor. I didn't mean to -- I
5 didn't mean to suggest otherwise.

6 THE COURT: And if it gets to the point
7 where the doctor feels uncomfortable
8 continuing, then you let me know.

9 MR. McELFISH: Your Honor, may I ask
10 that Mr. Moroknek has been defending these
11 depositions all week. Mr. Barmen was not
12 even supposed to be here. He was supposed
13 to be in a Philly case, but he is here. Can
14 I ask that just Mr. Moroknek be present for
15 these depositions because Mr. Barmen is
16 causing the problems, in my opinion?

17 MR. MOROKNEK: And, Judge, that's just
18 not --

19 MR. McELFISH: I am not done.

20 MR. MOROKNEK: Oh, I see.

21 MR. McELFISH: And that would make the
22 world of difference here, and there is no
23 need for him to be here. All they do is
24 talk in the deposition and stare at me and
25 do all sorts of childish things.

Andrew M. Casden, M.D.

2/23/2017

Page 63

1 MR. BARMEN: He's unbelievable.

2 MR. MOROKNEK: Your Honor, none of this
3 is true. Okay?

4 MR. McELFISH: You have to say that.

5 MR. MOROKNEK: He just makes things up
6 as we go along. Mr. Barmen represents a
7 client. He is being the quintessential
8 professional here. It's really -- I have
9 never -- Judge, you know, since '87 in the
10 Town of Warwick Justice Court I have never
11 seen anything like this in my life, ever.

12 MR. BARMEN: I don't think I have said
13 two words in here.

14 MR. MOROKNEK: No, you haven't. You
15 haven't.

16 Judge, Your Honor, we are going to try
17 to proceed. We are going to try to proceed
18 as best we can. If we have continued
19 issues, we will advise the Court
20 accordingly.

21 MR. McELFISH: I would like Mr. Barmen
22 removed. I honestly -- they don't need --
23 they don't need two lawyers.

24 MR. MOROKNEK: I can't proceed without
25 him, Judge.

Andrew M. Casden, M.D.
2/23/2017

Page 64

1 MR. McELFISH: They don't need two
2 lawyers, Judge.

3 THE COURT: They can have two lawyers if
4 they want. Depending on how they want to
5 spend their money, they want two lawyers,
6 that's their right, but one lawyer talks.
7 Only one lawyer talks.

8 MR. MOROKNEK: That's the way it's been,
9 Judge.

10 MR. McELFISH: But Barmen is doing other
11 things that he doesn't need to do, and it
12 just gets old after a while. It really is
13 childish.

14 THE COURT: Look, what are the other
15 things? He is staring at you. I can't -- I
16 mean --

17 MR. McELFISH: It is ridiculous. I
18 agree. I agree, and we shouldn't go down
19 this path. I called about the termination
20 because they -- I asked them four times if
21 we could continue, and they said no and left
22 the room with the doctor.

23 MR. MOROKNEK: You made the doctor feel
24 uncomfortable. You made the doctor feel
25 uncomfortable. You physically threatened --

Andrew M. Casden, M.D.

2/23/2017

Page 65

1 MR. McELFISH: Hold on a second.

2 MR. MOROKNEK: You physically threatened
3 an attorney.

4 MR. McELFISH: No, I did not.

5 MR. MOROKNEK: Yes, you did.

6 MR. McELFISH: Can you knock it off?

7 MR. MOROKNEK: You want to get the
8 witnesses from the hallway?

9 THE COURT: Stop. Stop.

10 MR. McELFISH: What I wanted to say --
11 what I wanted to say is --

12 THE COURT: No, no, no, no. Stop.

13 MR. McELFISH: Okay.

14 THE COURT: Stop. Stop. Continue with
15 the deposition. Get it done. And let the
16 doctor get back to treating patients.

17 MR. MOROKNEK: Thank you, sir.

18 MR. McELFISH: Okay. Thank you for your
19 time.

20 THE COURT: Bye.

21 (Telephonic hearing concludes.)

22 MR. MOROKNEK: Let's see what happens.

23 MR. McELFISH: You're doing it again.

24 MR. BARMEN: I'm not looking.

25 MR. MOROKNEK: Don't look at him.

Andrew M. Casden, M.D.
2/23/2017

Page 66

1 MR. BARMEN: I'm not looking.

2 MR. McELFISH: Honestly.

3 MR. BARMEN: Honestly.

4 MR. McELFISH: I will take care of it.

5 MR. BARMEN: I am sure you will. I
6 can't wait.

7 MR. McELFISH: You are doing it now.

8 MR. BARMEN: Are you going to continue
9 this, yes or no?

10 MR. McELFISH: You lied for him. Okay.
11 So at least you can now see what he is
12 doing. I know you have to lie for him.

13 MR. BARMEN: Are you going to continue?

14 MR. MOROKNEK: Raymond, we are going to
15 be here for another five minutes. If you
16 don't start the deposition, we are leaving.
17 Okay?

18 MR. McELFISH: Leave.

19 MR. MOROKNEK: You decide.

20 MR. McELFISH: You heard what the Court
21 said.

22 MR. MOROKNEK: You decide. I will call
23 the Court, and I will tell the Court.

24 MR. McELFISH: You won't do anything.
25 You're all talk.

Andrew M. Casden, M.D.

2/23/2017

Page 67

1 MR. MOROKNEK: Okay.

2 MR. McELFISH: You didn't believe me
3 when said I called.

4 MR. MOROKNEK: Okay.

5 BY MR. McELFISH:

6 Q. Okay. Let's try this again. I don't
7 remember where we were, but let's just go back, I
8 guess, for general sake to the 2013 lumbar films.
9 I think I was -- it's so far back now -- I think
10 I was asking you about anything else you had seen
11 on the films that were traumatic or degenerative
12 in nature other than what we already spoke about?

13 A. No.

14 Q. Okay. And I think I asked you this, but
15 did you observe in the film the increased signal
16 or the decreased signal in the L5-S1 compared to
17 the other levels?

18 A. Yes.

19 Q. Okay. All right. Now, with respect to
20 the cervical film --

21 MR. McELFISH: Stop it, Mr. Barmen.

22 Seriously.

23 MR. BARMEN: Stop what, Ray?

24 MR. McELFISH: Stop it, man.

25 MR. BARMEN: I honestly don't understand

Andrew M. Casden, M.D.
2/23/2017

Page 68

1 what your issue is.

2 BY MR. McELFISH:

3 Q. Going back to the cervical films at that
4 time, did you see any pathology just generally on
5 the cervical films in 2013?

6 A. Yes.

7 Q. What did you see?

8 A. They showed central disc herniations in
9 the left at C4, C5, C5, C6 central at C6-7. They
10 were noted to be of normal height, no fractured
11 dislocations. They were bulges at C2, C3 and
12 C3-4. There was no evidence of any acute injury
13 to the cervical spine.

14 Q. Okay. And in the Everly case you
15 offered an opinion that there were no neck
16 fractures in that case initially, correct?

17 MR. MOROKNEK: Objection to form.

18 THE WITNESS: Correct.

19 BY MR. McELFISH:

20 Q. And then at trial when you were shown
21 the radiographs and you were shown the reports,
22 you conceded that Ms. Everly had a number of
23 compression fractures at the various cervical
24 levels?

25 A. Oh, oh, Everly. Oh. There were clearly

Andrew M. Casden, M.D.
2/23/2017

Page 69

1 fractures in that case. I didn't recall
2 initially. There was a C7 and T1 compression
3 fractures.

4 Q. Right. But even though you had the
5 radiographs and the films in that case, you had
6 the initial opinion in your report that there was
7 no fracture?

8 A. That was --

9 MR. MOROKNEK: Form.

10 THE WITNESS: That was from the CT scan,
11 which was read by the neuroradiologist as
12 normal with no evidence of fracture.

13 The reason the fractures became apparent
14 were from the MRI scan, which showed signal
15 changes on the T1 and T2 weighted studies,
16 but the CT scan in itself was read as normal
17 by everybody.

18 BY MR. McELFISH:

19 Q. But once you had the MRI results in that
20 case, you did not update your report to reflect
21 that change?

22 MR. MOROKNEK: Objection to form.

23 THE WITNESS: I don't recall.

24 BY MR. McELFISH:

25 Q. Now, back to this case, with respect to

Andrew M. Casden, M.D.
2/23/2017

Page 70

1 the cervical spine, you did not see any of it --
2 any of the findings or any of the pathology as
3 traumatic in nature?

4 A. Correct.

5 Q. Okay. Was there any compression
6 centrally or laterally in the cervical spine that
7 you were able to see?

8 A. There was no compression of the spinal
9 cord itself.

10 Q. Okay. What about laterally?

11 A. Somewhat to the left at C4-C5 and C5-C6,
12 according to my report.

13 Q. Okay. And again, just so I have it in
14 my head correctly, on the lumbar spine there was
15 no compression laterally as well other than the
16 L5-S1 level?

17 MR. MOROKNEK: Objection to form. Asked
18 and answered.

19 THE WITNESS: Correct.

20 MR. McELFISH: Okay.

21 MR. MOROKNEK: Can you read that
22 question and answer back for me?

23 THE REPORTER: Sure.

24 MR. MOROKNEK: Thank you.

25 (Record read.)

Andrew M. Casden, M.D.
2/23/2017

Page 71

1 BY MR. McELFISH:

2 Q. Okay. And so now that I have heard the
3 question back, let me just try to be a little
4 clearer.

5 In the lumbar spine there was no
6 foraminal compression or lateral compression at
7 any of the levels in the lumbar spine other than
8 the L5-S1 -- L5-S1 in 2013?

9 A. Correct.

10 Q. Okay. Now was there any -- to your
11 recollection, was there any lateral compression
12 in the foramina on the left side in that 2013
13 film?

14 A. Of the cervical or lumbar?

15 Q. I am sorry. Lumbar.

16 A. There was the disc herniation on the
17 left side.

18 Q. That's more of a central herniation. I
19 am asking you more about the foramina.

20 A. I think there was bilateral foraminal
21 stenosis.

22 Q. What levels?

23 A. L5-S1.

24 Q. Okay. But no other levels on the left
25 side?

Andrew M. Casden, M.D.
2/23/2017

Page 72

1 A. No.

2 Q. Okay. Now going to the 2015 films, did
3 you generally make a comparison between the '15
4 and the '13 films?

5 MR. MOROKNEK: Objection.

6 THE WITNESS: Yes.

7 BY MR. McELFISH:

8 Q. And did you see any injury or change or
9 pathology on the 2015 films that were not present
10 on the '13 films there?

11 A. I think there was a little more of a
12 right-sided focal disc at L4-L5.

13 Q. Okay. How much more? Were you able to
14 quantify?

15 A. Small, very small and focal.

16 Q. In terms of millimeters, any idea?

17 A. I don't recall.

18 Q. Okay. Did you take any note of the
19 L5-S1 herniation and whether or not it had
20 changed?

21 A. I said it looked as seen as previous on
22 the MRI of November 8, 2013.

23 Q. Okay. And I take that to mean that you
24 saw it generally to be the same. I just want to
25 ask you a little more specifically, did you

Andrew M. Casden, M.D.

2/23/2017

Page 73

1 notice whether or not it had shrunk at all --

2 MR. MOROKNEK: Objection to form.

3 MR. McELFISH: -- from the 2015 films to
4 the --

5 What's funny, Mr. Barmen?

6 MR. BARMEN: Huh?

7 MR. McELFISH: You are doing it again,
8 man.

9 MR. BARMEN: What am I doing, Ray?

10 MR. McELFISH: You are laughing at every
11 question.

12 MR. BARMEN: Did I laugh?

13 MR. McELFISH: I am trying to examine
14 the doctor.

15 MR. BARMEN: No, no. You are not. I
16 don't know what you are doing.

17 MR. McELFISH: Exactly. You don't know.

18 MR. BARMEN: I don't know --

19 MR. McELFISH: Like a lot of things.

20 BY MR. McELFISH:

21 Q. So did you notice any shrinkage of the
22 L5-S1 herniation on the 2015 film versus the '13
23 film?

24 MR. MOROKNEK: Objection.

25 THE WITNESS: It's not in my report, no.

Andrew M. Casden, M.D.

2/23/2017

Page 74

1 MR. McELFISH: I'm sorry. I didn't hear
2 you.

3 THE WITNESS: It's not in my report, no.

4 BY MR. McELFISH:

5 Q. Okay. Are you familiar with the term
6 "resorption"?

7 A. Yes.

8 Q. Tell me what that is.

9 A. It's when a disc gets smaller as time
10 goes by, a herniation.

11 Q. Did you note in any of Dr. Mobin's
12 reports or any of his follow-up, supplemental or
13 rebuttal reports or his deposition, where he had
14 noted his review of the 2015 film, and that he
15 believes that the L5-S1 herniation had resorbed
16 and shrunk?

17 A. I don't recall it completely, but I know
18 there was some reference to it. I actually wrote
19 a paper on that.

20 Q. On resorption?

21 A. Uh-huh.

22 Q. Were you able to observe the hydration,
23 if you will, generally, of the L5-S1 versus the
24 other levels in the '15 film?

25 A. I believe it was degenerated compared to

Andrew M. Casden, M.D.

2/23/2017

Page 75

1 the other levels, yes.

2 Q. Okay. Had it acquired any hydration or
3 had it resorbed any -- had it undergone any
4 resorption since the 2013 films comparatively?

5 MR. MOROKNEK: Objection to form.

6 THE WITNESS: I don't recall.

7 BY MR. McELFISH:

8 Q. So you don't know one way or the other?

9 A. I don't recall.

10 Q. Okay. Assuming that -- and I will try
11 to get this right -- assuming that there was
12 resorption of the L5-S1 disc in the 2015 films,
13 would that be an indication to you that there was
14 a traumatic event to the L5-S1 herniation in '13?

15 A. No.

16 Q. What paper did you write on resorption?

17 A. "Spontaneous regression of a large disc
18 herniation." It was published, I believe, in
19 Clinical Orthopedics and Related Research, and it
20 involved resorption of a previously very large
21 lumbar disc herniation.

22 Q. I am sorry. Where did you published it
23 at?

24 A. I believe it was -- I believe it's in
25 Clinical Orthopedics and Related Research. It's

Andrew M. Casden, M.D.
2/23/2017

Page 76

1 in my C.V.

2 Q. Okay. Did you have any co-authors?

3 A. Suzanne Miller, I believe.

4 Q. Who is she?

5 A. She was a medical student at the time.

6 Q. Okay. Any other changes that we have
7 not talked about that you observed on the 2015
8 film versus the '13 film?

9 A. Not in my report, no.

10 Q. Do you believe that the L4-L5 -- well,
11 let me ask it this way: Did you see any trauma
12 related to the L4-L5 change?

13 A. No.

14 Q. So there was no edema or there was no
15 other indications of trauma at that level?

16 A. No.

17 Q. Okay. And did you see whether or not
18 the L4-L5, the increased size of that disc on the
19 '15 film, could you tell whether or not it was
20 compressing centrally or laterally?

21 MR. MOROKNEK: Objection to form.

22 THE WITNESS: I don't believe it was,
23 no.

24 BY MR. McELFISH:

25 Q. Okay. That was not a great question for

Andrew M. Casden, M.D.
2/23/2017

Page 77

1 what I wanted. What I was trying to find out is:
2 Were you able to tell the -- whether or not the
3 increased L4-L5 disc on the '15 film, whether or
4 not it was doing anything that would cause pain?

5 A. I don't believe so.

6 MR. MOROKNEK: Objection to form.

7 BY MR. McELFISH:

8 Q. Do you still have the '13 films
9 somewhere?

10 A. No.

11 Q. What did you do with those?

12 A. The disks I just destroyed.

13 Q. Okay. If you recall, then, with regard
14 to the 2013 films, do you recall, did you write
15 down or document what window or frame you were
16 looking at and whether it was sagittal or axial
17 as to where you saw the central protrusion?

18 A. I usually -- I usually look at both.
19 It's not just one or the other. I look at the
20 axials and the sagittals, and the T1 and T2
21 weighted studies.

22 Q. Do you remember the plane? Did you mark
23 it down?

24 A. No.

25 Q. Okay. You said in your report that the

Andrew M. Casden, M.D.

2/23/2017

Page 78

1 neurological findings did not correlate. What
2 did you mean?

3 A. Well, initially he had no complaints of
4 back pain is one thing. So if, in fact, that --
5 I mean, excuse me. No complaints of leg pain in
6 the emergency room. So if this was a large acute
7 disc herniation, one would have expected him to
8 have left leg pain at the time of the injury.

9 Q. Okay. But based on the film that you
10 saw and that we have been discussing, the pain he
11 did complain of on the right side could have come
12 from the foramina and the compression?

13 MR. MOROKNEK: Objection to form.

14 THE WITNESS: I don't think that his
15 foraminal complaints would be accounted for
16 for back pain, no.

17 BY MR. McELFISH:

18 Q. Okay. But for the leg pain and the leg
19 weakness it could be true?

20 MR. MOROKNEK: Objection to form.

21 THE WITNESS: It can. Degenerative
22 changes like that can cause pain in the leg.

23 BY MR. McELFISH:

24 Q. Okay. What about delayed onset? Do you
25 believe in the idea that someone can have an

Andrew M. Casden, M.D.
2/23/2017

Page 79

1 injury and there is a delayed onset to the
2 symptoms?

3 A. What symptoms?

4 Q. Low back or leg symptoms.

5 A. Not in the leg. Not if you have an
6 acute herniated disc, I don't think there is a
7 delayed onset.

8 Q. What about in the back?

9 A. I think that the back, if it's hurt, it
10 hurts right then and there. I don't think it
11 comes on later.

12 Q. Have you ever seen a case where someone
13 developed back pain within a couple of days or a
14 week after the accident?

15 A. I have seen it, but it's usually just
16 muscular mechanical pain.

17 Q. Not herniated disc or a disc injury?

18 A. No.

19 Q. Have you seen any of the articles or any
20 of the science that's been developed on delayed
21 onset?

22 A. Not that I can think of, no.

23 Q. Assuming that Mr. Bauta had a
24 degenerative condition in his lower spine at the
25 time of this accident, do you believe this

Andrew M. Casden, M.D.

2/23/2017

Page 80

1 accident exacerbated that condition?

2 MR. MOROKNEK: Objection to form.

3 THE WITNESS: No.

4 BY MR. McELFISH:

5 Q. Do you believe it made -- the accident
6 made the condition symptomatic?

7 A. It could have made it symptomatic, but
8 it was preexisting degenerative disease.

9 Q. Right. I want you to make that
10 assumption, Doctor, that it was preexisting
11 degenerative disease.

12 A. Uh-huh.

13 Q. Do you believe that the accident caused
14 it to be symptomatic?

15 MR. MOROKNEK: Objection to form.

16 THE WITNESS: It can cause pain to --
17 something to become symptomatic, yes.

18 BY MR. McELFISH:

19 Q. What I am asking you, though, is a
20 slightly different question. In this case -- I
21 understand it can -- in this case do you believe
22 it did?

23 A. Did what? I am not following.

24 Q. Let me rephrase.

25 Because you just testified that an

Andrew M. Casden, M.D.

2/23/2017

Page 81

1 accident can make an underlying degenerative
2 condition symptomatic, I am asking you now, is
3 it -- do you believe in this case, this accident
4 caused Mr. Bauta's underlying degenerative
5 condition to become symptomatic?

6 A. No, I don't.

7 Q. Why? What do you base that belief on?

8 A. The fact that his symptoms do not
9 correlate with the MRI finding. I think this MRI
10 of the herniated disc on the left side was
11 preexisting. I think his foraminal stenosis was
12 preexisting, and I don't think they were of
13 sufficient magnitude to be injured by the -- in
14 this type of an accident.

15 Q. I want you to assume that the herniated
16 disc that we are talking about -- can we call it
17 an extruded disc?

18 A. I think it was a herniated disc. I
19 don't think the fragment was necessarily
20 extruded. That has to have migrated, and I don't
21 think this migrated.

22 Q. You didn't see any extrusion on the
23 film?

24 A. It's hard to call an extrusion until you
25 are in surgery. Sometimes you can. I take that

Andrew M. Casden, M.D.
2/23/2017

Page 82

1 back.

2 Q. Back to my question, though. Did you
3 see any extrusion on the film?

4 A. I think this was a herniation, not an
5 extrusion.

6 Q. But you didn't see any extrusion on the
7 film?

8 A. I just said, I don't think it was
9 extruded.

10 Q. That would be no? In other words, you
11 did not?

12 A. No.

13 Q. All right. Now, I want you to assume
14 that -- well, I guess the MRI reports called it a
15 large herniation. I believe you called it a
16 large herniation when you testified about what
17 you saw in the film in 2013.

18 Assume it's an 11-millimeter extrusion
19 on the left side. Would that have been
20 symptomatic prior to this accident?

21 MR. McELFISH: Objection to form.

22 THE WITNESS: Sometimes yes, and a lot
23 of times no.

24 BY MR. McELFISH:

25 Q. You can have an 11-millimeter extruded

Andrew M. Casden, M.D.
2/23/2017

Page 83

1 disc or herniated disc with no pain?

2 A. Absolutely.

3 Q. Do you know how many hours you have
4 spent on this case?

5 A. A lot. I don't know. I have reviewed
6 the records several times and then more records
7 came. I don't know. I would say 10 hours to
8 15 hours, somewhere around there.

9 Q. Do you have a record of that?

10 A. No, I don't.

11 Q. Did you bill the defendants for your
12 time?

13 A. I bill by set fees. I don't bill by the
14 hour.

15 Q. You bill \$10,000 for a review and
16 report?

17 A. Correct.

18 Q. \$15,000 for testimony?

19 A. Only in court, not in the office.

20 Q. Correct. And when you are in
21 depositions, how do you bill that?

22 A. I bill out at 7,500 for the deposition.

23 Q. Okay. Regardless of how long it takes?

24 A. Regardless.

25 Q. Okay.

Andrew M. Casden, M.D.

2/23/2017

Page 84

1 A. I had to leave the operating room today
2 to come here and do this.

3 Q. Okay. Did you see in any of the
4 treating doctors' records that they noted that
5 Mr. Bauta's complains did not match up with his
6 neurological findings?

7 A. Not in the treating doctors' records, I
8 don't believe.

9 Q. He treated with how many? Five, ten
10 providers at least?

11 A. I didn't add them up.

12 MR. MOROKNEK: Objection to form.

13 You can answer.

14 THE WITNESS: Five to ten.

15 MR. McELFISH: Sorry. Go ahead.

16 THE WITNESS: Five to ten, I would say.

17 BY MR. McELFISH:

18 Q. Okay. Did you note from reviewing --
19 you said you reviewed the records a couple of
20 times. Did you note in your report after having
21 those reviews, anywhere where any one of his
22 treating doctors made the comment or a notation
23 or the intimation even, I suppose, that the
24 complaints did not match the neurological
25 findings?

Andrew M. Casden, M.D.

2/23/2017

Page 85

1 MR. MOROKNEK: Objection to form. Asked
2 and answered.

3 THE WITNESS: No.

4 MR. McELFISH: Different question.
5 Thank you. If you need a break, just let me
6 know.

7 THE WITNESS: No, I am fine.

8 BY MR. McELFISH:

9 Q. Would you agree with me that in looking
10 at the cervical films, that, you know, absent a
11 fracture of the bone, bony structure, you
12 wouldn't necessarily see edema? So if you have
13 an injury or you have an accident or an event,
14 someone has neck pain, absent a fracture or an
15 injury to the bony structure, you wouldn't
16 necessarily see edema?

17 MR. MOROKNEK: Objection to form.

18 THE WITNESS: Correct.

19 BY MR. McELFISH:

20 Q. Okay. Said another way, if you just had
21 an injury where someone has a musculoligamentous
22 injury or just a -- potentially even a disc
23 protrusion, you wouldn't necessarily see edema?

24 A. You could have a ligament injury and see
25 edema, but generally, it's in the bone.

Andrew M. Casden, M.D.
2/23/2017

Page 86

1 Q. Do you have an opinion about whether or
2 not an April 15, 2014, fall on ice had any impact
3 on his injury?

4 A. No.

5 Q. So you don't believe the fall on the ice
6 that was indicated at Brookdale Hospital in April
7 of 2014 made his injury worse or had any, I
8 guess, contributing effect to it?

9 A. I don't have any opinion on that.

10 Q. All right. Did you see the record from
11 Brookdale from April of 2014 about the fall?

12 A. No, I did not.

13 Q. Okay. Thank you.

14 With respect to Dr. Alladin's records --
15 and I am asking it this way, Doctor, because I
16 think you know your report probably better than I
17 do. I don't know your report very well, but did
18 you have an opportunity to note whether or not
19 Dr. Alladin diagnosed weakness in the lower
20 extremity early on in his care?

21 A. He did document some weakness.

22 Q. And motor weakness, right?

23 A. Correct.

24 Q. On the right side?

25 A. Correct.

Andrew M. Casden, M.D.
2/23/2017

Page 87

1 Q. And how did he do that?

2 MR. MOROKNEK: Objection to form.

3 THE WITNESS: I wasn't there. I assume
4 he tested him.

5 BY MR. McELFISH:

6 Q. Well, that's what I am getting at. I am
7 not asking you to speculate, obviously, but as an
8 expert, if you have reviewed his record, I was
9 trying to ascertain whether or not you could tell
10 from his record how he did that?

11 A. I cannot.

12 Q. And can you tell me what the
13 quantitative -- what the quantitative measurement
14 was in the weakness of the motor on the right
15 side?

16 A. He recorded what, in retrospect, does
17 not make a lot of sense because he recorded
18 weakness of his biceps, triceps, interosseous,
19 and handgrip. Those are -- I mean, that's almost
20 the complete arm, which is -- anatomically makes
21 no sense.

22 Q. Okay. But with respect to the right,
23 lower extremity, he documented a 3 out of 5 motor
24 weakness, correct?

25 A. Correct. And he said due to pain.

Andrew M. Casden, M.D.
2/23/2017

Page 88

1 Q. He did not document such a motor
2 weakness on the left side?

3 A. Not in my report, no.

4 Q. And not any of his other reports?

5 A. Not that I know of.

6 Q. Thank you.

7 Now, with respect to your practice here
8 at Mount Sinai Hospital, how much of your
9 practice is defense -- is expert work versus
10 clinical work?

11 A. In my daily routine here at the
12 hospital, it's five percent of the time.

13 Q. Let's say in a given year, how much of
14 your time is devoted to forensic work?

15 A. I spend some time on weekends, but my
16 main focus is my clinical practice, so at least
17 80 percent of my time.

18 Q. All right. How many cases do you have
19 right now as an expert?

20 A. Right now?

21 Q. Uh-huh.

22 A. I don't know what you mean by "have
23 right now." How many are pending to be done
24 or --

25 Q. Fine. I will withdraw -- and fine.

Andrew M. Casden, M.D.

2/23/2017

Page 89

1 How many cases do you currently have
2 pending where you have been retained as an
3 expert?

4 A. Well, I have done reports. I do
5 reports. I don't know if that keeps me retained
6 or not. I mean, you know, I finish the report,
7 and I am done as far as I concerned.

8 Q. Assume it does.

9 A. Assume it does.

10 Q. Yes.

11 A. I still don't know. Is that within a
12 year or within two years or every report I have
13 ever done?

14 Q. What's currently open.

15 A. I really don't know the answer to that
16 question --

17 Q. Okay.

18 A. -- from my point of view.

19 Q. Okay. Well, how many reports have you
20 written this year so far?

21 A. This year?

22 Q. Uh-huh.

23 A. Not that many. Maybe -- it's January,
24 maybe ten.

25 Q. Okay. How many IMEs have you done this

Andrew M. Casden, M.D.
2/23/2017

Page 90

1 year?

2 A. Maybe ten.

3 Q. Is that typical for year to year? I
4 mean, we are only in -- we just got through
5 February basically.

6 A. It depends. It varies. If I am on
7 vacation, if I am around. I do -- on average,
8 it's -- if I am around, it's one to two a week.

9 Q. Okay. If you are around?

10 A. Right. If I am in the office.

11 Q. Okay. Out of the ones that you do have,
12 how many are defense and how many are plaintiff?

13 A. They are all defense work.

14 Q. Do you have any cases in your office
15 right now where you are an expert for the
16 plaintiff?

17 A. No.

18 Q. And when is the last time you had any --
19 when is the last time you were retained by a
20 lawyer or by the plaintiff in a case?

21 A. As an expert witness?

22 Q. As an expert for the plaintiff.

23 A. As a treating physician or as an expert?

24 Q. As an expert, retained expert.

25 A. Not as a treating physician?

Andrew M. Casden, M.D.

2/23/2017

Page 91

1 Q. Correct.

2 A. I don't think I did.

3 Q. Ever?

4 A. No.

5 Q. Okay. How many times have you been
6 retained as a non -- how many times have you
7 acted as a non-retained expert, meaning a
8 treating doctor --

9 A. Once.

10 Q. -- in a case? When was that?

11 A. Oh, years ago.

12 Q. Is that the one in Connecticut,
13 Papadakis?

14 A. Yes.

15 Q. I believe in that case you testified
16 that pain is evidence of trauma, didn't you?

17 A. I don't recall that. No.

18 Q. You were just asked about it in the
19 Everly case, and you said, "Pain is evidence of
20 trauma." Do you recall that testimony?

21 A. I don't recall saying those words, no.

22 Q. Do you agree with that as a concept?

23 A. Pain can be a sign of trauma, yes.

24 Q. Okay. With respect to Mr. Bauta's back
25 pain, do you have an opinion -- I want to ask it

Andrew M. Casden, M.D.
2/23/2017

Page 92

1 this way for a reason -- do you have an opinion
2 as to whether or not Mr. Bauta was faking his
3 complaints?

4 MR. MOROKNEK: Objection to the form of
5 the question.

6 THE WITNESS: I don't have an opinion
7 other than I didn't think he participated
8 completely when I tested his muscle
9 strength.

10 BY MR. McELFISH:

11 Q. But other than that, you don't have an
12 opinion?

13 A. No.

14 Q. Did you note from the hospital records
15 in Brooklyn that he complained of whole body
16 pain?

17 A. Yes.

18 Q. And he had head injuries in the
19 Evangelical Hospital?

20 A. I don't recall that part, no.

21 Q. What did he complain about at
22 Evangelical?

23 A. He had a headache. They did a CT scan
24 of his head, which was negative. He complained
25 of pain in the neck, dizziness, neck stiffness,

Andrew M. Casden, M.D.
2/23/2017

Page 93

1 chest pain. He denied chest pain, rather. He
2 complained of lower back pain, pain in his legs,
3 right worse than left.

4 Q. Do you know whether or not he had any
5 abrasions or cuts or visible injuries to his
6 head?

7 A. I believe he had an abrasion on his head
8 if I am not mistaken.

9 Q. Have you ever seen a photo?

10 A. I can't remember.

11 Q. Were you asked to evaluate mechanism of
12 injury in this case?

13 A. No, I was not.

14 Q. So you have no opinion one way or
15 another whether or not there was a mechanism of
16 injury which caused Mr. Bauta's injuries?

17 A. Oh, I thought you mean looking at the
18 car. No. I know what happened in the accident,
19 how the accident happened.

20 Q. Okay. Let's back up, then. Let's back
21 up.

22 So do you have an opinion as to whether
23 or not this bus accident caused these injuries
24 Mr. Bauta complains of in terms of his back?

25 A. I think he is complaining of injuries

Andrew M. Casden, M.D.

2/23/2017

Page 94

1 because of it. I don't think -- I think his
2 changes were all preexisting degenerative
3 changes.

4 Q. But he has symptoms from it?

5 A. Correct.

6 MR. MOROKNEK: Objection to the form of
7 the question.

8 BY MR. McELFISH:

9 Q. In terms of the mechanism, the specific
10 mechanism, not biomechanics, not Delta-v, not
11 change in speed, I am asking you about medical
12 mechanism of being in a rear-end accident as a
13 passenger on a bus, is that consistent with the
14 injuries or complaints he is making?

15 MR. MOROKNEK: Objection to the form of
16 the question.

17 THE WITNESS: It could be.

18 BY MR. McELFISH:

19 Q. Do you believe it is or is not?

20 MR. MOROKNEK: Objection to form.

21 THE WITNESS: I believe it could be.

22 MR. McELFISH: Okay. Sorry, guys. I
23 have to see what this is.

24 (Discussion off the record.)

25 BY MR. McELFISH:

Andrew M. Casden, M.D.

2/23/2017

Page 95

1 Q. In terms of mechanism, Doctor, do you
2 have any understanding as to how the accident
3 happened?

4 MR. MOROKNEK: Objection to form. Asked
5 and answered.

6 THE WITNESS: I believe it was a rear-
7 end collision.

8 BY MR. McELFISH:

9 Q. Do you know the body mechanics in terms
10 of the mechanism, how the body was moving and
11 things like that that might have caused this
12 injury?

13 A. No.

14 Q. Okay. Did you read plaintiff's
15 deposition as an expert in the case?

16 A. I did. I looked at it. Yes. I don't
17 recall much of it, but I did look at it.

18 Q. Did you make any comments about any of
19 it in your report?

20 A. No, I did not.

21 Q. Do you recall which deposition you read?
22 Because he was deposed twice.

23 A. I think both I saw.

24 Q. Okay. You didn't make any comments one
25 way or the other?

Andrew M. Casden, M.D.
2/23/2017

Page 96

1 A. No.

2 Q. Now, with respect to the treatment
3 records that we discussed that you outlined in
4 your report and your testimony here today, do you
5 have an opinion, Doctor, as to whether or not
6 the -- whether or not the surgeries that Mr.
7 Bauta had in this case were reasonable and
8 necessary for the conditions he was complaining
9 of at that time?

10 (Mr. Barmen left the room.)

11 THE WITNESS: Necessary is not a way of
12 looking at it. This was elective surgery
13 based upon complaints. It's not necessary
14 surgery.

15 BY MR. McELFISH:

16 Q. Was it reasonable?

17 A. I would not have done what this doctor
18 did. I don't think he needed surgery at the
19 L4-L5 level. I am not sure why that was done. I
20 probably would not have -- would have not fused
21 his spine in general, but I don't think it's
22 unreasonable what was done.

23 Q. So if I understand you correctly, you
24 are saying you wouldn't have done it, but in
25 terms of the medical community, you don't believe

Andrew M. Casden, M.D.

2/23/2017

Page 97

1 that what he did was unreasonable?

2 MR. MOROKNEK: Objection to form.

3 THE WITNESS: I don't think -- I don't
4 think most people would have done this, no.

5 BY MR. McELFISH:

6 Q. Then how can you say it's not
7 unreasonable?

8 A. Because I don't think it was grossly
9 negligent. I just would not have done it, and I
10 don't think it's what should have been done.

11 Q. Going back to your testimony about why
12 you would not have done it, you said you did not
13 understand why there was surgery at the L4-L5
14 level, right?

15 A. Correct.

16 Q. But earlier you said you noticed on the
17 films that there was nerve root compression on
18 the foramina?

19 A. I did not say at L4-L5.

20 MR. MOROKNEK: Objection to form.

21 THE WITNESS: You said that.

22 BY MR. McELFISH:

23 Q. Let me withdraw that. Was there --
24 would it be reasonable to operate at the L5-S1?

25 MR. MOROKNEK: Objection to form.

Andrew M. Casden, M.D.
2/23/2017

Page 98

1 THE WITNESS: That could be reasonable,
2 yes.

3 BY MR. McELFISH:

4 Q. All right. So let's break it down,
5 then. With respect to a surgery at L4-L5, was
6 there surgery done?

7 A. I believe there was.

8 Q. What was done?

9 A. I believe a laminectomy and a fusion and
10 instrumentation.

11 (Mr. Barmen returned.)

12 BY MR. McELFISH:

13 Q. Okay. And did that address -- what did
14 that address, to your knowledge?

15 A. I don't know. The disc was not
16 degenerative. I don't know why they fused that
17 level, and the herniation was so small that I
18 don't think it was a sign of problems for him.

19 Q. Can you state any basis for why you
20 believe that L4-L5 surgery was done?

21 A. I cannot.

22 Q. Now with respect to the L5-S1, what do
23 you understand was done?

24 A. A laminectomy, a fusion and a
25 decompression.

Andrew M. Casden, M.D.
2/23/2017

Page 99

1 Q. Okay. And was that reasonable?

2 MR. MOROKNEK: Objection to form.

3 THE WITNESS: Again, it depends. I put
4 together the patient's symptoms, their
5 complaints, how I think they are going to do
6 postoperatively, and then make a decision
7 about whether surgery should be done or not.

8 BY MR. McELFISH:

9 Q. In this case, do you believe what was
10 done was reasonable?

11 MR. MOROKNEK: Objection to form.

12 THE WITNESS: I don't think it was
13 unreasonable, no.

14 BY MR. McELFISH:

15 Q. Okay. Do you agree that fusion should
16 be done if a patient has unretractable discogenic
17 back pain?

18 MR. MOROKNEK: Objection to form.

19 THE WITNESS: In certain situations,
20 yes.

21 BY MR. McELFISH:

22 Q. What about in this situation?

23 A. I think it's not unreasonable.

24 Q. Okay. And can you say why there was
25 another surgery? Are you able to tell?

Andrew M. Casden, M.D.

2/23/2017

Page 100

1 A. Apparently some of the screws were
2 misplaced, so they had to go back in and take
3 them out.

4 Q. Okay. But as of now, he is living with
5 the hardware in his spine?

6 A. As I understand it, yes.

7 Q. Let me see if I can just ask it one
8 other way. Do you believe that there was any
9 alternative for the surgeons -- just, Doctor, I
10 understand your opinion about L4-L5 -- but with
11 respect to L5-S1, was there any alternative for
12 the doctors other than the fusion that they did?

13 A. Yes.

14 Q. What was it?

15 A. Not to operate.

16 Q. And do what?

17 A. Just treat him nonoperatively, and he is
18 no better off now than he was before. So he
19 could have avoided surgery and have the same
20 problems.

21 Q. You agree with me that he was treated
22 conservatively with multifaceted modalities for
23 two to three years before the surgery?

24 A. Correct.

25 Q. And they did not work?

Andrew M. Casden, M.D.
2/23/2017

Page 101

1 A. Correct.

2 Q. Including facet blocks and epidurals?

3 A. Correct.

4 Q. So we can take the facet blocks and
5 epidurals out of play, true?

6 A. True.

7 MR. MOROKNEK: Objection to form. I am
8 not sure what that means.

9 BY MR. McELFISH:

10 Q. Okay. Have you reviewed Dr. Winn's
11 deposition?

12 A. I probably saw it. I don't recall
13 reviewing it, per se, but I did see it.

14 Q. Did you note it in your report?

15 A. I said before earlier that I talked
16 about Dr. Winn's treatment or I don't know; I
17 don't remember if it was Dr. Winn's note or Dr.
18 Alladin's notes that had Dr. Winn's notes in it.

19 Q. I was asking a different question. I
20 was asking if you made a note in your report of
21 whether or not you saw Dr. Winn's deposition?

22 A. No. It's not in my report.

23 Q. Other than sending Mr. Bauta back to
24 conservative care -- hold on. Other than to
25 sending --

Andrew M. Casden, M.D.

2/23/2017

Page 102

1 MR. MOROKNEK: Just note my objection to
2 the last question insofar as Dr. Winn was
3 just deposed. He was deposed after the
4 doctor, this doctor, Dr. Casden, prepared
5 his report.

6 BY MR. McELFISH:

7 Q. In terms of when you say he should
8 have -- they should have not operated and done
9 conservative care, what would you have
10 recommended?

11 A. Sometimes it's better not to operate,
12 that's all.

13 Q. But do you have -- I am trying to -- I
14 understand your opinion in that regard, but,
15 Doctor, what I am trying to find out is: What do
16 you believe should have been done for him?

17 A. Maybe just pain medication and no
18 surgery.

19 Q. Okay. What about returning him for
20 injections and epidurals?

21 A. I think --

22 MR. MOROKNEK: Objection.

23 THE WITNESS: If you failed them at some
24 point, it's enough. You have done enough,
25 and it's not worth trying again.

Andrew M. Casden, M.D.

2/23/2017

Page 103

1 BY MR. McELFISH:

2 Q. And do you believe he had sufficient
3 physical therapy to exhaust that avenue?

4 A. Yes, I do.

5 MR. MOROKNEK: Form.

6 BY MR. McELFISH:

7 Q. And do you find that the reasonable --
8 do you find that the physical therapy that he had
9 in this case was reasonable?

10 A. Yes, I believe so.

11 Q. And what about, I think based on your
12 last answer before that, you said that if someone
13 fails the injections and the epidurals, that it's
14 over, basically?

15 A. At some point, yes.

16 Q. At some point. Do you believe that the
17 conservative care he received in that regard with
18 respect to the injections and the epidurals were
19 reasonable for the complaints he was making?

20 MR. MOROKNEK: Objection to form.

21 THE WITNESS: I don't believe in all the
22 things that were done to him, but I use --
23 but I do have people who do these injections
24 for me.

25 BY MR. McELFISH:

Andrew M. Casden, M.D.
2/23/2017

Page 104

1 Q. Okay. So what was it you believe -- you
2 don't believe should have been done to him?

3 A. I am just not a big believer,
4 personally, in medial branch blocks. I don't
5 find they really have an effect.

6 Q. Why not?

7 A. I can't tell you why. I just don't
8 think from my 20 years of doing this that they
9 were, but I think that epidurals do work.

10 Q. And what about facet blocks?

11 A. Maybe.

12 Q. What about rhizotomies?

13 A. No.

14 Q. You don't do those?

15 A. No.

16 Q. So, so far in this case, if you billed
17 7,500 for today and 10,000 for the report, you
18 are up \$17,500?

19 MR. MOROKNEK: Objection to form.

20 THE WITNESS: Correct.

21 BY MR. McELFISH:

22 Q. When you -- you said earlier that
23 Mr. Fabiani was your friend or a lawyer that you
24 knew that you first started doing expert work
25 with?

Andrew M. Casden, M.D.

2/23/2017

Page 105

1 A. Correct.

2 Q. When you testified on trial in Everly
3 that he gave you discounts, what did you mean by
4 that?

5 A. When I -- I don't want say in front of
6 these guys, but I do --

7 Q. We are here.

8 A. I do it for him for \$7,500.

9 Q. To do what?

10 A. Because that's what we started for. The
11 IMEs.

12 Q. Okay. And does he get a discount on
13 anything else?

14 A. No.

15 Q. And why do you do a discount for Mr.
16 Fabiani?

17 A. He has called me and said he can't get
18 more from his clients.

19 Q. So because these defendants can pay
20 more, there is no problem billing more?

21 MR. MOROKNEK: Objection to form.

22 Argumentative.

23 THE WITNESS: I don't --

24 MR. MOROKNEK: Foundation.

25 THE WITNESS: I don't see any problem

Andrew M. Casden, M.D.
2/23/2017

Page 106

1 with it.

2 MR. McELFISH: Okay.

3 MR. BARMEN: I don't, either. Get what
4 you can get.

5 THE WITNESS: I get paid different
6 amounts for surgery when I do surgery. It's
7 the same thing.

8 BY MR. McELFISH:

9 Q. What do you charge for a fusion?

10 A. What do I charge?

11 Q. What's the charges?

12 A. That comes out of the computer. My
13 billing department does that.

14 Q. Do you have any idea?

15 A. It depends the type of fusion, how many
16 levels you are doing, and the insurance payments.

17 Q. What about a double level fusion?

18 A. The computer would --

19 Q. Lumbar.

20 A. -- probably put out a bill in the range
21 of 45 to 50,000, but we don't get paid that.

22 Q. Is that just your surgical bill?

23 A. That's -- would be just my surgical
24 bill.

25 Q. What would the facility bill be?

Andrew M. Casden, M.D.
2/23/2017

Page 107

1 A. I don't know.

2 Q. Do you have some ballpark?

3 A. No.

4 Q. Over six figures?

5 A. I have no idea.

6 Q. Would a double level fusion require an
7 overnight stay?

8 A. Yes.

9 Q. How much is an overnight stay in a
10 hospital?

11 A. I don't know.

12 Q. Here at Mount Sinai?

13 A. I don't know.

14 Q. Okay. Okay. Do you have any opinions
15 in this case as to whether or not the bills, the
16 medical bills of Mr. Bauta, the treatment bills,
17 and the surgical bills, and the facility bills,
18 and the conservative care bills, do you have any
19 opinion as to whether or not they are reasonable
20 and customary?

21 MR. MOROKNEK: Objection to form.

22 THE WITNESS: I have no clue. I have no
23 idea what was charged for anything.

24 BY MR. McELFISH:

25 Q. Okay. Okay. Some experts have

Andrew M. Casden, M.D.
2/23/2017

Page 108

1 opinions, particularly out West, it's a little
2 different where the surgeons will testify as to
3 the reasonableness and customariness of the
4 bills, so that's why I am asking.

5 A. Yes.

6 Q. You were not asked to do that?

7 A. No.

8 Q. Okay. Now, with respect to -- let's go
9 back to your opinion that you believe that the --
10 at least the L5-S1 portion of the fusion was not
11 unreasonable.

12 MR. MOROKNEK: Objection to form.

13 BY MR. McELFISH:

14 Q. Okay?

15 A. Correct.

16 Q. Okay. Based upon that, and then the
17 condition of Mr. Bauta post fusion, do you have
18 any opinion as to whether or not he would need
19 future medical care?

20 A. I believe he will require future medical
21 care, yes.

22 Q. What do you believe he needs?

23 A. Pain management is all I would ever do
24 for him.

25 Q. Okay. Sir, what about adjacent segment

Andrew M. Casden, M.D.
2/23/2017

Page 109

1 disease or adjacent level disease or adjacent
2 segment breakdown; you know what I am referring
3 to?

4 A. Yes.

5 Q. In a 39- or a 40-year-old gentleman,
6 what are the likelihoods that he will develop
7 adjacent segment disease or breakdown in the next
8 ten years?

9 A. Percentage-wise?

10 Q. Anything you can -- any way we can do
11 it.

12 A. Five percent maybe.

13 Q. That's it?

14 A. That's it.

15 Q. Is there any -- is it more likely -- let
16 me ask it this way: As an expert, is it more
17 likely than not that Mr. Bauta will in his
18 lifetime or within his life expectancy need
19 additional fusions at the adjacent levels?

20 A. Less likely.

21 Q. Not more likely than not?

22 A. Correct.

23 Q. Okay. And what do you base that on?

24 A. Personal experience. I have many
25 patients that have 20-plus years from a fusion

Andrew M. Casden, M.D.

2/23/2017

Page 110

1 and have never had any more surgery.

2 Q. And how many of those patients are we
3 talking about?

4 A. I don't know. I have operated on
5 thousands of patients.

6 Q. Okay. And have you had them all back to
7 see if they have had additional fusions based on
8 adjacent segment disease?

9 MR. MOROKNEK: Objection to form.

10 THE WITNESS: Not all, no.

11 BY MR. McELFISH:

12 Q. Are you familiar with the literature in
13 the field about the percentages and probabilities
14 of additional fusions based on adjacent segment
15 disease after a fusion?

16 A. I am familiar with the some of the
17 literature, not the specific numbers. The
18 numbers are probably all over the place in terms
19 of what percentages.

20 Q. Can you cite any of the literature?

21 A. No, I can't.

22 Q. How much -- going back to your opinion
23 on future medical care, how much conservative
24 care do you believe he will need or pain
25 management do you believe he will need?

Andrew M. Casden, M.D.

2/23/2017

Page 111

1 A. If it were me, I would just give him
2 pain pills, and that's it.

3 Q. And just let him go?

4 A. Yeah.

5 Q. Okay. What kind of pain pills would you
6 prescribe?

7 A. I am not a pain management doctor,
8 but --

9 Q. Well, if you are -- if it's your
10 opinion -- and just correct me if I am wrong --
11 if it's your opinion that all you would do in
12 terms of future medical care is give him pain
13 pills, I am just curious as to what pills you
14 would --

15 A. I would have a pain management doctor
16 manage his pain medication requirements, but I
17 think that is what this patient needs is just
18 pain medication for now.

19 Q. Are you aware of whether or not Mr.
20 Bauta took any pain medications prior to his
21 surgery?

22 A. I am not.

23 Q. Are you --

24 A. I assume no.

25 Q. You would assume did he not?

Andrew M. Casden, M.D.

2/23/2017

Page 112

1 A. Correct.

2 Q. Okay. Are you aware of whether or not
3 Mr. Bauta took pain medications since his
4 surgery?

5 A. He takes -- he was taking Tizanidine,
6 but that's all, I believe.

7 Q. What is that?

8 A. I don't believe he was taking any
9 narcotics as far as I know.

10 Q. Did you ask him?

11 A. I usually do ask, yes.

12 Q. Is it in your report that you asked him,
13 and is his answer there?

14 A. The question is not there, but I only
15 mentioned Tizanidine, so I don't have any other
16 answers.

17 Q. Okay. I would assume if you asked him
18 about narcotics, you would have noted that.
19 Well, let me rephrase it.

20 Considering that you believe that's the
21 type of future medical care you think he needs,
22 if you had asked him whether or not he is taking
23 any medication, that would be noted?

24 A. Correct.

25 MR. MOROKNEK: Objection to form.

Andrew M. Casden, M.D.
2/23/2017

Page 113

1 BY MR. McELFISH:

2 Q. And it's not?

3 A. Correct.

4 MR. MOROKNEK: Objection to form.

5 BY MR. McELFISH:

6 Q. I do note from the Papadakis transcript
7 you were asked whether or not it is reasonable to
8 do a fusion to alleviate pain, and your answer
9 was yes.

10 MR. MOROKNEK: Objection to form.

11 THE WITNESS: Correct.

12 BY MR. McELFISH:

13 Q. I believe you have been asked that
14 question in five or six other cases at least and
15 you gave the same answer.

16 A. Correct.

17 Q. Was there a situation where you made
18 \$30,000 in one day testifying?

19 A. Yes.

20 Q. You testified in Queens in the morning
21 and Kings in the afternoon?

22 A. Correct.

23 Q. And then in New York the same week?

24 A. I believe so.

25 Q. That was Papadakis v Fahan, I believe,

Andrew M. Casden, M.D.
2/23/2017

Page 114

1 in 2003?

2 A. I don't recall.

3 Q. Okay. Now, in that case I believe you
4 were asked about whether or not someone could
5 have pain after a collision without any
6 structural change at all on their MRI, and you
7 said yes?

8 A. Correct.

9 Q. And you believe that's true?

10 A. Yes.

11 Q. And assuming Mr. Bauta's pathology on
12 his films were preexisting, that's what would
13 happen here, right?

14 MR. MOROKNEK: Objection to form.

15 THE WITNESS: Could.

16 BY MR. McELFISH:

17 Q. I am getting there, Doctor, I am working
18 my way to the end.

19 A. Sounds good to me.

20 Q. Do you remember the Lopez case, Lopez
21 versus the City, 2011, a couple of years ago?

22 A. Not really. A little bit, I think,
23 because he had a bad injury. Rectal injury if I
24 am not mistaken.

25 Q. Right. Wasn't that an impalement case?

Andrew M. Casden, M.D.
2/23/2017

Page 115

1 A. I believe so.

2 Q. And your opinion in that case was he had
3 no injury from the accident?

4 MR. MOROKNEK: Objection to form.

5 THE WITNESS: He was impaled in the
6 rectum by a rebar if I am not mistaken.

7 BY MR. McELFISH:

8 Q. Okay. How did the jury come out in that
9 case?

10 MR. MOROKNEK: Objection to form.

11 THE WITNESS: I don't know.

12 BY MR. McELFISH:

13 Q. Certainly you don't believe that a
14 surgeon such as yourself as an expert is in a
15 better position to evaluate Mr. Bauta's injuries
16 than his own treating doctors, do you?

17 MR. MOROKNEK: Objection to form.

18 THE WITNESS: Rephrase it? Say it
19 again?

20 BY MR. BARMEN:

21 Q. Sure. You don't believe as an expert in
22 this case that you are in a better position to
23 evaluate Mr. Bauta's injuries and the causation
24 thereof than his treating doctors, are you?

25 MR. MOROKNEK: Objection.

Andrew M. Casden, M.D.
2/23/2017

Page 116

1 THE WITNESS: I can't answer how well
2 they treated him or not.

3 BY MR. McELFISH:

4 Q. Are you in a better position than they
5 are?

6 A. No.

7 MR. MOROKNEK: Objection to form.

8 BY MR. McELFISH:

9 Q. Are you in a worse position?

10 A. I think I make a pretty good assessment
11 from seeing him and evaluating the records.

12 Q. Comparatively speaking, are you in a
13 better or worse position than they are?

14 MR. MOROKNEK: Objection to form.

15 THE WITNESS: I think similar.

16 BY MR. McELFISH:

17 Q. Now in the Papadakis case, which I know
18 you are -- you have been asked about recently, I
19 guess, and the Everly case and in other cases you
20 were the expert for the plaintiffs in that case?

21 A. Correct.

22 Q. And in that case, Papadakis had a
23 fusion, I believe?

24 A. Correct.

25 Q. Okay. And you offered an opinion in

Andrew M. Casden, M.D.
2/23/2017

Page 117

1 that case that, based upon the fusion that was
2 done, that that -- which I believe you did that
3 fusion, didn't you?

4 A. Correct.

5 Q. That she would need future care,
6 including future surgery, didn't you?

7 A. I don't recall it was so long ago.

8 Q. I think in that case -- if you know you
9 know, if you don't, you don't. We will get the
10 transcripts I guess later. I didn't want to
11 waste time with the transcripts today, but I just
12 wanted to ask you: In that case, you actually
13 indicated that she needed future surgery,
14 including adjacent level -- including adjacent
15 level work based on the adjacent segment disease?

16 MR. MOROKNEK: Objection to the form of
17 the question. Do you have the transcript?
18 You don't have the transcript to show him?

19 MR. McELFISH: I am not answering your
20 questions. I have a pending question for
21 the doctor.

22 MR. MOROKNEK: My -- if you have --

23 MR. McELFISH: You can make an
24 objection, Mr. Moroknek. Go ahead.

25 MR. MOROKNEK: I am in the process of

Andrew M. Casden, M.D.

2/23/2017

Page 118

1 trying to do that. Objection to the form of
2 the question. If you have the transcript,
3 it would be nice to be able to show him.

4 MR. McELFISH: I know what would be
5 nice, but there is a question pending.

6 THE WITNESS: There is a big difference
7 between cervical spine adjacent disease and
8 lumbar spine adjacent disease.

9 BY MR. McELFISH:

10 Q. Understood. You testified, though, in
11 that case that based on the fusion you did for
12 Papadakis, that they would need future surgery
13 based on adjacent segment.

14 A. I may have.

15 Q. And some of these questions are out of
16 my curiosity. Some of them are just -- need to
17 be nailed down if you will. This is one that I
18 think needs to be nailed down, is: Were you
19 asked to have an opinion or do you have an
20 opinion on any cost of future care for Mr. Bauta?

21 A. I was not asked that, no.

22 Q. Okay. And have you seen the life care
23 plan in this case prepared by either -- there
24 were two -- either the one from Mr. Provder, the
25 plaintiff's life care expert, or the one from

Andrew M. Casden, M.D.
2/23/2017

Page 119

1 Wendy Cummings, the defendant's life care expert?

2 A. I saw both of them.

3 Q. You did. Do you have any opinion on
4 them?

5 A. I think the one from the plaintiff was
6 grossly overestimating the amount of studies and
7 injections and treatments that would be
8 necessary.

9 Q. Was there a life care plan in the
10 Papadakis case?

11 A. I don't recall.

12 Q. Are you able to say, as you sit here --
13 and if you don't remember, it's fine -- but are
14 you able to say what -- what recommendations made
15 by Mr. Provder were overexaggerated?

16 A. I don't recall. It would have to do
17 with how many MRIs of the cervical spine, how
18 often, how many visits to the doctor, how often,
19 MRIs every year of the cervical and lumbar spine,
20 that kind of thing.

21 Q. Earlier when I was asking you about
22 future care, you indicated that you would refer
23 to pain management, and they would deal with the
24 pills or whatever.

25 A. Correct.

Andrew M. Casden, M.D.

2/23/2017

Page 120

1 Q. As a foundation for the question, my
2 question is: Given the fusion that Mr. Bauta had
3 in this case, would you recommend any future MRIs
4 to see where we stand in terms of its progression
5 or prognosis?

6 A. Only if his symptoms change.

7 Q. His symptoms are bad enough right now,
8 right?

9 MR. MOROKNEK: Objection to form.

10 MR. McELFISH: Let me rephrase. Let me
11 rephrase.

12 BY MR. McELFISH:

13 Q. When you saw him just a few months ago
14 or, sorry, a year ago, he had severe pain, right?

15 MR. MOROKNEK: Objection to form.

16 THE WITNESS: He had pain. I am not
17 going to comment on the severity of it.

18 BY MR. McELFISH:

19 Q. Were you able to find out from him or
20 make a determination from him on a scale of 1 to
21 10 what his lower back pain level was at that
22 time?

23 A. His subjective complaints, I believe,
24 was a 10 -- a 6 to a 10 out of 10.

25 Q. And on that basis, do you believe that

Andrew M. Casden, M.D.

2/23/2017

Page 121

1 he would -- because he was post surgical at that
2 point in time --

3 A. Correct.

4 Q. -- over eight months, seven months -- do
5 you believe he would need future MRIs to check
6 the progression or prognosis of that surgery?

7 A. No.

8 Q. Okay. Give me a second to look at my
9 papers. Have you had a chance to review the
10 reports or the deposition of defense expert
11 Rabin -- Rabin or whatever it is?

12 A. Yes.

13 Q. And do you agree or disagree with
14 anything he says?

15 A. Again, I didn't go over it in -- I don't
16 recall it in detail, but for the most part I
17 agreed with him, yes.

18 Q. Did you make any notes in your report
19 about what you agreed with or what you disagreed
20 with?

21 A. No, I did not.

22 Q. Do you know him personally?

23 A. No.

24 MR. MOROKNEK: Just note my objection to
25 the form of the question as far as the

Andrew M. Casden, M.D.

2/23/2017

Page 122

1 availability of the documents counsel is
2 talking about as related to when this report
3 was done.

4 BY MR. McELFISH:

5 Q. What about with respect to Mr. Bauta's
6 neck pain? Did he exhibit any neck pain when you
7 saw him at the IME?

8 A. He complained of neck pain.

9 Q. What recommendations would you make for
10 that?

11 A. Would I make for that?

12 Q. Yeah, if he were your patient.

13 A. I would have him just continue with pain
14 management and physical therapy as such, but I
15 would not recommend surgery.

16 Q. Would you recommend injections?

17 A. I usually try one or two cervical
18 epidurals. I am not a big fan of them.

19 Q. But you would try them in this case?

20 A. I would try one or two.

21 Q. Why did you say you do not think he
22 would need surgery? Where did that come from?

23 A. Because I don't think he's got -- I
24 don't know where I would operate. He's got
25 levels all over the place of little bulges of his

Andrew M. Casden, M.D.
2/23/2017

Page 123

1 disc, so I don't know how you pick and choose
2 what level to operate on.

3 Q. Right. Well, you understand in this
4 case that he has not had an operation on his
5 neck?

6 A. Correct.

7 Q. And you understand that plaintiff's main
8 neurosurgeon expert has opined he does not need
9 neck surgery?

10 A. Correct.

11 Q. So I was wondering where the comment
12 about he did not need a neck surgery come from?

13 A. From me.

14 Q. All right. So you agree with everybody?

15 A. Yeah.

16 Q. Okay. Do you have any other opinions in
17 this case other than what's in your report and
18 other than what you testified to here today?

19 A. No, I do not.

20 MR. McELFISH: I have no further
21 questions of this witness.

22 Dr. Casden, thank you.

23 THE WITNESS: My pleasure.

24 MR. MOROKNEK: Thanks, Doc.

25 THE WITNESS: That's it?

Andrew M. Casden, M.D.
2/23/2017

Page 124

1 MR. McELFISH: Wait. Wait. One thing,
2 before you go, I didn't bring a printed-out
3 version of your report, so if we can just
4 give the court reporter your report as an
5 exhibit to your deposition, at least we will
6 have it marked there.

7 (Casden Exhibit 1, Report of Dr. Casden
8 dated September 28, 2016 marked for
9 Identification.)

10 (Time noted: 3:50 p.m.)
11
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Andrew M. Casden, M.D.
2/23/2017

Page 125

A C K N O W L E D G M E N T

STATE OF)
) ss.:
COUNTY OF)

I, ANDREW M. CASDEN, M.D., hereby certify
that I have read the transcript of my testimony
taken under oath in my deposition; that the
transcript is a true, complete and correct record
of my testimony, and that the answers on the
record as given by me are true and correct.

ANDREW M. CASDEN, M.D.

Signed and subscribed to before me, this _____
day of _____, ____.

Notary Public, State of _____

Andrew M. Casden, M.D.
2/23/2017

Page 126

C E R T I F I C A T E

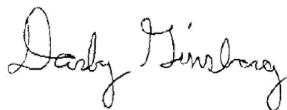
STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

I, DARBY GINSBERG, a Notary Public
within and for the State of New York, do hereby
certify:

That ANDREW M. CASDEN, M.D., the
witness whose deposition is herein before set
forth, was duly sworn by me and that such
deposition is a true record of the testimony
given by such witness.

I further certify that I am not related
to any of the parties to this action by blood or
marriage; and that I am in no way interested in
the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 6th day of March, 2017.



DARBY GINSBERG
Commission Number: 01GI6230654
Expires: 11-1-2018

Andrew M. Casden, M.D.
2/23/2017

Page 1

A	110:8,14 117:14,14,15 118:7,8,13 admonitions 11:19,24 23:11 advise 63:19 afternoon 5:7 56:16 113:21 age 15:6,9 aggressive 60:2 ago 32:17,20 91:11 114:21 117:7 120:13 120:14 agree 34:11,17 64:18,18 85:9 91:22 99:15 100:21 121:13 123:14 agreed 35:10 121:17,19 ahead 18:1 52:6 84:15 117:24 AKOS 1:6 al 56:2 Alladin 25:2 86:19 Alladin's 24:9 24:17 26:12 86:14 101:18 alleviate 113:8 alternative 100:9,11 amazed 59:7 amazing 58:22 59:5 AMERICA 1:7 amount 119:6 amounts 106:6 anatomically 87:20 ANDERSON 1:6 ANDREW 1:16 4:3 125:7,16	126:10 ankles 20:11 answer 12:4 19:3 43:25 45:1 70:22 84:13 89:15 103:12 112:13 113:8,15 116:1 answered 70:18 85:2 95:5 answering 117:19 answers 112:16 125:11 anteriorly 36:24 36:25 37:2 anymore 7:6 53:13 apologize 41:16 52:21 56:19 58:7 apparent 69:13 Apparently 100:1 Appearing 3:15 application 49:3 appreciate 49:20 appropriate 59:16 April 86:2,6,11 area 11:10 areas 5:17 18:3 Argumentative 105:22 arm 87:20 arrested 55:7 arrived 12:21 articles 79:19 ascertain 87:9 aside 14:3 37:24 asked 6:1 8:17 8:21 9:1,6,9,11 9:14 15:18 16:11 45:12,25 49:14,18 57:8	64:20 67:14 70:17 85:1 91:18 93:11 95:4 108:6 112:12,17,22 113:7,13 114:4 116:18 118:19 118:21 asking 10:20 11:6 12:1,2 34:24 58:11 67:10 71:19 80:19 81:2 86:15 87:7 94:11 101:19 101:20 108:4 119:21 asks 58:17 assault 55:12,14 assessment 116:10 assignment 8:13 8:14 assume 81:15 82:13,18 87:3 89:8,9 111:24 111:25 112:17 assuming 42:5 44:1 75:10,11 79:23 114:11 assumption 80:10 attention 15:16 attorney 56:6 65:3 Attorneys 2:4,14 3:4 attribute 18:7 availability 122:1 available 22:3 54:19 avenue 3:5 103:3 average 90:7	avoid 60:23 avoided 100:19 aware 11:16 13:21 14:2,3,8 17:16,17 26:4 26:6,8,10 111:19 112:2 axial 35:2 77:16 axials 77:20
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Andrew M. Casden, M.D.
2/23/2017

Page 2

47:7,9,11,23 47:25 48:2,19 50:23 51:8,10 51:17,20,24 52:3,6,24 53:4 53:9,11,25 54:25 55:11,18 55:20,23 56:11 56:12,23 57:8 58:2,24 59:3 59:14,18,22,23 62:11,15 63:1 63:6,12,21 64:10 65:24 66:1,3,5,8,13 67:21,23,25 73:5,6,9,12,15 73:18 96:10 98:11 106:3 115:20 Barmen's 48:7 base 81:7 109:23 based 14:13 17:2 17:3 78:9 96:13 103:11 108:16 110:7 110:14 117:1 117:15 118:11 118:13 basically 90:5 103:14 basis 98:19 120:25 Bauta 1:3 8:23 9:15 12:16 13:4,22 14:5 32:16 40:7 45:19 56:1,6 79:23 92:2 93:24 96:7 101:23 107:16 108:17 109:17 111:20 112:3 118:20 120:2 Bauta's 15:6	39:13 46:4 47:14 81:4 84:5 91:24 93:16 114:11 115:15,23 122:5 beginning 11:14 11:22 behave 50:4 59:20 behavior 61:20 belief 81:7 believe 8:1 24:11 26:17 67:2 74:25 75:18,24 75:24 76:3,10 76:22 77:5 78:25 79:25 80:5,13,21 81:3 82:15 84:8 86:5 91:15 93:7 94:19,21 95:6 96:25 98:7,9 98:20 99:9 100:8 102:16 103:2,10,16,21 104:1,2 108:9 108:20,22 110:24,25 112:6,8,20 113:13,24,25 114:3,9 115:1 115:13,21 116:23 117:2 120:23,25 121:5 believer 104:3 believes 74:15 bend 15:19 16:13 18:6,20 19:1,21,22 bending 15:20 18:11 best 58:8 63:18	better 14:9 41:17 86:16 100:18 102:11 115:15,22 116:4,13 biceps 20:10 87:18 big 7:9 104:3 118:6 122:18 bilateral 71:20 bill 83:11,13,13 83:15,21,22 106:20,22,24 106:25 billed 104:16 billing 105:20 106:13 bills 7:2 107:15 107:16,16,17 107:17,18 108:4 biomechanics 94:10 BISGAARD 2:13 bit 5:10 29:1,3 59:18 114:22 blocks 101:2,4 104:4,10 blood 126:16 board 5:16 27:24 body 11:4,8 92:15 95:9,10 bone 85:11,25 bony 29:23,25 30:3 85:11,15 bottom 20:19 box 27:25 28:2,8 28:13 brachioradialis 20:11 Brad 2:17 47:22 brad.barmen... 2:20	Bradley 54:25 56:11 branch 104:4 break 85:5 98:4 breakdown 109:2,7 brief 60:16 bring 7:1 124:2 Brisbois 2:13 8:2 bro 50:14 Brook 3:6 Brookdale 24:9 86:6,11 Brooklyn 92:15 brought 6:23 buddy 55:22 building 9:24 bulges 43:9,13 68:11 122:25 bulging 43:8 bully 58:20 bus 13:23 14:6 14:11 93:23 94:13 buttocks 39:3,6 Bye 65:20 bypass 12:3 <hr/> C <hr/> C 2:1 3:1 5:1 125:1 126:1,1 C.V 76:1 C2 68:11 C3 68:11 C3-4 68:12 C4 68:9 C4-C5 70:11 C5 68:9,9 C5-C6 70:11 C6 68:9 C6-7 68:9 C7 69:2 California 2:6 call 20:6 22:3 40:4 51:18	52:5 54:1,11 54:13 56:18 58:7 60:9 66:22 81:16,24 called 5:1 11:24 16:16 20:18 28:21 52:14 53:17,22 54:3 54:6 57:21 60:20 64:19 67:3 82:14,15 105:17 calling 52:16 53:18 56:17 57:12 canal 35:20 38:1 Capiola 25:22 car 93:18 care 9:3,12 53:11 61:4 66:4 86:20 101:24 102:9 103:17 107:18 108:19,21 110:23,24 111:12 112:21 117:5 118:20 118:22,25 119:1,9,22 Casden 1:16 4:3 4:7,8 13:15 56:13,22 102:4 123:22 124:7,7 125:7,16 126:10 case 1:9 6:7,12 6:15 7:14 8:13 8:22 9:9,12 12:13 24:6,22 26:21 29:19 40:12 52:1 58:21 62:13 68:14,16 69:1 69:5,20,25 79:12 80:20,21
---	---	---	--	--

Andrew M. Casden, M.D.
2/23/2017

Page 3

81:3 83:4 90:20 91:10,15 91:19 93:12 95:15 96:7 99:9 103:9 104:16 107:15 114:3,20,25 115:2,9,22 116:17,19,20 116:22 117:1,8 117:12 118:11 118:23 119:10 120:3 122:19 123:4,17 cases 7:24 10:6 12:8 88:18 89:1 90:14 113:14 116:19 caught 15:15 causally 8:23 45:22 causation 115:23 cause 37:16 38:1 38:19 40:9 77:4 78:22 80:16 caused 80:13 81:4 93:16,23 95:11 causes 38:24 causing 40:15,16 41:2,4 60:7 62:16 CAV 1:7 central 35:16,18 37:12,13,15 38:1 68:8,9 71:18 77:17 centrally 37:8,14 40:24 70:6 76:20 certain 31:22 99:19 certainly 14:13	18:8 31:7 61:17 115:13 certified 5:16 certify 125:7 126:9,15 cervical 15:21 27:6,9,11,15 67:20 68:3,5 68:13,23 70:1 70:6 71:14 85:10 118:7 119:17,19 122:17 chair 10:16 chambers 57:21 chance 17:25 35:7 59:20 61:21 121:9 change 32:1,1 69:21 72:8 76:12 94:11 114:6 120:6 changed 72:20 changes 23:24 28:23 32:13 33:4,6,10,11 69:15 76:6 78:22 94:2,3 characteristics 31:23,24 charge 106:9,10 charged 107:23 charges 106:11 check 121:5 checked 20:1,13 Chen 26:2 Chen's 26:3 chest 93:1,1 Chicago 5:15 childish 62:25 64:13 choose 123:1 chose 46:21 Chuck 21:12 cite 110:20	cities 60:24 City 114:21 claim 60:21 claimed 30:3 clean 43:3 clearer 71:4 clearly 68:25 clerk 54:2,5 Cleveland 2:16 client 63:7 clients 105:18 clinical 75:19,25 88:10,16 clonus 20:18 clue 107:22 co-authors 76:2 Coleman 3:3 6:22 collision 95:7 114:5 come 9:13 39:3 50:17,18 57:22 58:21 59:9 78:11 84:2 115:8 122:22 123:12 comes 79:11 106:12 coming 51:3 60:24 command 16:12 comment 31:3 84:22 120:17 123:11 commented 12:12 comments 95:18 95:24 Commission 126:24 communication 58:24 community 24:8 96:25 comparatively	75:4 116:12 compare 38:9 compared 43:22 67:16 74:25 comparison 34:16 72:3 comparisons 32:4 33:23 complain 78:11 92:21 complained 92:15,24 93:2 122:8 complaining 93:25 96:8 complains 84:5 93:24 complaints 14:10 47:14 78:3,5,15 84:24 92:3 94:14 96:13 99:5 103:19 120:23 complete 87:20 125:10 completely 74:17 92:8 compressed 44:23 compressing 76:20 compression 37:13,15,25 38:12,14,18 39:19,21,23 40:8,11,25 41:4 44:13 68:23 69:2 70:5,8,15 71:6 71:6,11 78:12 97:17 computer 106:12,18 conceded 68:22	concept 91:22 concerned 89:7 conclude 61:9 concluded 61:7 concludes 65:21 condition 79:24 80:1,6 81:2,5 108:17 conditions 14:4 96:8 conference 56:1 57:22 Connecticut 91:12 conservative 101:24 102:9 103:17 107:18 110:23 conservatively 100:22 Considering 112:20 consistent 46:6 47:14,16 94:13 Cont'd 3:1 contacted 6:15 6:20 7:22 37:9 contain 23:18 contained 23:3 continue 47:12 49:24 50:2 61:11 62:1 64:21 65:14 66:8,13 122:13 continued 63:18 continuing 62:8 contrary 13:14 contributing 86:8 cooperating 10:19,19 cord 20:16 70:9 Cordiale 24:24 25:2 Cordiale's 24:11
--	---	--	--	---

Andrew M. Casden, M.D.
2/23/2017

Page 4

Cordially 21:14	79:13 84:19	deal 51:7 119:23	16:10	developed 79:13
Cornell 5:12	114:21	dealing 60:13	denied 93:1	79:20
corner 9:22,23	course 6:17 46:5	decades 18:16	Dennehey 3:3	devoted 88:14
correct 6:11,25	court 1:1 49:3	18:18	6:22 7:21	diagnosed 86:19
9:25 10:24	51:2 54:1,4,6	decide 66:19,22	department	dictate 21:22
12:14 13:25	56:14,15 61:8	decided 59:19	106:13	dictation 21:20
14:23,25 15:2	61:15,25 62:6	decision 99:6	depending 10:18	difference 62:22
17:7 19:16	63:10,19 64:3	decompression	64:4	118:6
20:25 22:13	64:14 65:9,12	98:25	depends 90:6	different 13:19
23:6,9,22 24:1	65:14,20 66:20	decreased 67:16	99:3 106:15	14:22 16:15
24:25 27:2	66:23,23 83:19	defendant 56:22	depose 49:13	80:20 85:4
28:10 30:10	124:4	defendant's	deposed 95:22	101:19 106:5
32:21 33:5,22	covered 19:18	119:1	102:3,3	108:2
34:4,7 35:22	crazy 55:4,5	defendants 1:8	deposition 1:16	difficulty 10:16
39:25 41:25	CT 27:6 69:10	2:14 3:4 56:8	11:21,24 12:7	diminished 20:6
42:15,18,21,23	69:16 92:23	83:11 105:19	13:18 32:22	direct 61:21
68:16,18 70:4	Cummings	defending 62:10	34:19 48:22	direction 36:10
70:19 71:9	119:1	defense 6:15	49:2,4,6 50:17	57:23
83:17,20 85:18	curiosity 118:16	88:9 90:12,13	50:21 52:11	disagree 121:13
86:23,25 87:24	curious 111:13	121:10	53:13,14 56:21	disagreed 35:10
87:25 91:1	current 23:25	deficit 16:3	57:3,11,17	121:19
94:5 97:15	currently 89:1	degenerated	59:9 60:19	disc 30:25 31:1
100:24 101:1,3	89:14	74:25	61:7,9 62:1,24	31:19,19,22,24
104:20 105:1	customariness	Degeneration	65:15 66:16	31:25 32:1
108:15 109:22	108:3	33:10	74:13 83:22	33:3,10,16,24
111:10 112:1	customary	degenerative	95:15,21	34:14 35:16
112:24 113:3	107:20	28:23 29:4,7,9	101:11,21	36:8,21,23
113:11,16,22	cuts 93:5	29:10 32:13	121:10 124:5	37:1 43:8 68:8
114:8 116:21		33:4,6,9,11	125:9 126:11	71:16 72:12
116:24 117:4	D	43:6 67:11	126:13	74:9 75:12,17
119:25 121:3	D 2:7 4:1 5:1,1	78:21 79:24	depositions	75:21 76:18
123:6,10	125:1	80:8,11 81:1,4	62:11,15 83:21	77:3 78:7 79:6
125:10,12	daily 88:11	94:2 98:16	describe 11:3	79:17,17 81:10
correctly 70:14	Darby 1:17	degrees 15:19,20	36:10	81:16,17,18
96:23	126:7,24	15:21,22,23	described 19:24	83:1,1 85:22
correlate 78:1	date 22:9,10,16	18:7,20 19:1,8	40:6	98:15 123:1
81:9	dated 4:8 27:7,8	dehydrated 31:4	DESCRIPTION	discogenic 99:16
cost 118:20	27:9,10,12,15	31:19,24	4:7	discount 105:12
counsel 56:3,7	124:8	dehydration	destroy 7:8	105:15
56:22 62:2	dates 27:17	33:2	destroyed 77:12	discounts 105:3
122:1	daughters 58:19	delayed 78:24	detail 121:16	discuss 51:13,15
country 22:7	day 12:18,19	79:1,7,20	detected 16:1	discussed 96:3
COUNTY 125:5	21:15 113:18	Delta-v 94:10	determination	discussing 44:13
126:5	125:20 126:20	Demetrios 24:10	120:20	78:10
couple 18:16,18	days 79:13	demonstrated	develop 109:6	Discussion 94:24

Andrew M. Casden, M.D.
2/23/2017

Page 5

disease 5:14 80:8 80:11 109:1,1 109:7 110:8,15 117:15 118:7,8 disk 30:15 disks 77:12 dislocations 30:2 68:11 dispense 11:18 12:2 distracting 46:10,18 DISTRICT 1:1 1:2 dizziness 92:25 Doc 123:24 Docket 56:2 doctor 5:7 48:23 48:25 49:2,20 52:19,25 57:5 57:7,15 59:10 59:17 60:3,6 62:7 64:22,23 64:24 65:16 73:14 80:10 86:15 91:8 95:1 96:5,17 100:9 102:4,4 102:15 111:7 111:15 114:17 117:21 119:18 doctor's 59:3 60:8 doctors 84:22 100:12 115:16 115:24 doctors' 84:4,7 document 77:15 86:21 88:1 documentation 14:9 15:1 23:20 documented 87:23 documents 24:4	24:5 122:1 doing 5:15,19,25 6:4 11:15 16:21 18:14,18 50:9 51:6 52:8 56:19 57:17 61:4 64:10 65:23 66:7,12 73:7,9,16 77:4 104:8,24 106:16 double 106:17 107:6 Dr 4:8 13:15 24:9,10,10,11 24:17,20,24 25:2,22,25 26:2,3,5,7,9,14 26:16 34:9,20 35:1 39:10,10 41:19 42:1,16 42:19 56:13,22 74:11 86:14,19 101:10,16,17 101:17,18,21 102:2,4 123:22 124:7 draft 23:17 drafts 22:18 Drive 2:5 dude 48:1 49:11 51:19 53:8 due 16:2 18:8,9 58:14 87:25 duly 5:2 126:12	early 39:12 86:20 East 1:12 2:15 EASTERN 1:2 edema 76:14 85:12,16,23,25 effect 86:8 104:5 effort 16:2,19 17:1 18:21 EHL 40:4 eight 121:4 either 8:11 22:6 40:3 43:5 106:3 118:23 118:24 elective 96:12 emergency 24:7 78:6 EMG 17:6 encroached 37:8 ENTERPRISE 1:7 entire 59:8 epidurals 101:2 101:5 102:20 103:13,18 104:9 122:18 equal 17:11 20:6 ESQ 2:7,17 3:7 established 39:21 estimate 30:20 estimates 19:8 19:13,15 et 56:2 evaluate 93:11 115:15,23 evaluating 116:11 Evangelical 24:8 92:19,22 event 44:21 75:14 85:13 events 14:4 Everly 6:10	68:14,22,25 91:19 105:2 116:19 everybody 57:3 69:17 123:14 evidence 28:22 29:22 68:12 69:12 91:16,19 ex 53:25 exacerbated 80:1 exact 9:21 Exactly 73:17 exaggerating 17:15 exam 12:17,17 12:19 17:9 18:2 19:17,20 20:12 21:13 22:12,15 examination 4:2 5:5 8:14 10:2 10:22 13:2 examinations 10:7 examine 9:15 10:4 73:13 examined 5:3 13:1 32:16 examining 16:21 excuse 29:6 78:5 exhaust 103:3 exhibit 4:8,12 122:6 124:5,7 exhibits 34:22 34:23 exists 59:4 expect 49:13 expectancy 109:18 expected 78:7 experience 31:15 109:24 experienced 59:24	expert 5:20,25 11:15,21 18:15 60:20 87:8 88:9,19 89:3 90:15,21,22,23 90:24,24 91:7 95:15 104:24 109:16 115:14 115:21 116:20 118:25 119:1 121:10 123:8 experts 107:25 Expires 126:25 explain 39:20 expressions 12:5 Extended 15:22 extent 35:23 extremities 15:25 19:22,23 extremity 86:20 87:23 extrude 36:21 extruded 36:11 81:17,20 82:9 82:25 extruding 40:23 extrusion 36:15 37:25 40:17 41:2 81:22,24 82:3,5,6,18
F				
F 48:13 126:1 Fabiani 6:6 104:23 105:16 face 48:7 facet 101:2,4 104:10 facility 106:25 107:17 fact 52:23 78:4 81:8 facts 58:8 Fahan 113:25 failed 102:23				

Andrew M. Casden, M.D.
2/23/2017

Page 6

fails 103:13	59:20 61:21	78:12 97:18	85:11,14	gang 56:25
Fair 11:13 35:12	find 24:5 42:13	foraminal 38:6	fractured 68:10	gastroc 40:3
37:4	61:23 77:1	71:6,20 78:15	fractures 28:22	general 24:13
faking 92:2	102:15 103:7,8	81:11	30:2,4 68:16	29:4 67:8
fall 86:2,5,11	104:5 120:19	forensic 88:14	68:23 69:1,3	96:21
familiar 74:5	finding 16:24	forgot 19:9	69:13	generally 11:23
110:12,16	20:7 37:3	form 10:9 13:24	fragment 81:19	29:8 36:2 68:4
fan 122:18	39:13 81:9	14:17 25:3,4	frame 77:15	72:3,24 74:23
far 13:17 14:14	findings 17:10	30:13 36:1	Franklin 24:12	85:25
67:9 89:7,20	20:13,21 21:16	37:17,21 38:20	frankly 59:13,23	generated 24:21
104:16 112:9	23:4 70:2 78:1	39:3,15 40:18	friend 6:1	gentleman 57:15
121:25	84:6,25	41:5 42:8,25	104:23	57:16 60:25
FAX 2:9,19 3:9	fine 20:5 85:7	43:11,15,24	front 36:19,21	109:5
FB 1:9	88:25,25	44:9,25 46:7	36:24 60:3	getting 10:16
February 1:13	119:13	58:12 68:17	105:5	87:6 114:17
27:10 90:5	fingers 20:22,23	69:9,22 70:17	fuck 53:5	Ginsberg 1:17
feel 12:25 16:18	finish 49:5 50:16	73:2 75:5	full 15:24,25	126:7,24
16:20 59:12,15	50:20 89:6	76:21 77:6	17:14 18:21	give 8:8 58:8
64:23,24	firm 2:3 6:21	78:13,20 80:2	funny 73:5	59:19 61:20
feeling 16:25	7:25 8:3	80:15 82:21	further 48:23	111:1,12 121:8
17:3	first 1:7 5:2 6:14	84:12 85:1,17	123:20 126:15	124:4
feels 59:11 62:7	51:4,5 53:16	87:2 92:4 94:6	fused 96:20	given 11:17 46:2
fees 83:13	58:3,4 104:24	94:15,20 95:4	98:16	88:13 120:2
field 110:13	FIRSTGROUP	97:2,20,25	fusion 17:22	125:12 126:14
Fifth 25:12	1:7	99:2,11,18	98:9,24 99:15	giving 16:25
fight 53:3	five 10:7 66:15	101:7 103:5,20	100:12 106:9	18:21
figures 107:4	84:9,14,16	104:19 105:21	106:15,17	go 13:1 28:4
file 6:16 7:1	88:12 109:12	107:21 108:12	107:6 108:10	33:14 48:3,12
film 35:5,14,15	113:14	110:9 112:25	108:17 109:25	49:9 50:15,23
36:8 37:5 43:5	flexed 15:21	113:4,10	110:15 113:8	51:12 52:6
67:15,20 71:13	focal 72:12,15	114:14 115:4	116:23 117:1,3	53:3,23 58:3,4
73:22,23 74:14	focus 88:16	115:10,17	118:11 120:2	59:1 60:7 61:2
74:24 76:8,8	follow 36:20	116:7,14	fusions 109:19	61:16 63:6
76:19 77:3	follow-up 45:15	117:16 118:1	110:7,14	64:18 67:7
78:9 81:23	74:12	120:9,15	future 9:11	84:15 100:2
82:3,7,17	following 54:13	121:25	108:19,20	108:8 111:3
films 30:24	80:23	forth 126:12	110:23 111:12	117:24 121:15
31:11,16 32:3	follows 5:3	forward 15:19	112:21 117:5,6	124:2
43:2,3 67:8,11	foot 20:19,20	18:6,20 19:21	117:13 118:12	God 55:20
68:3,5 69:5	foramen 38:24	19:21 61:16	118:20 119:22	goes 29:2 74:10
72:2,4,9,10	39:19,19 40:13	found 58:11	120:3 121:5	Goggin 3:3 6:22
73:3 75:4,12	40:25	foundation		going 15:4 18:2
77:8,14 85:10	foramina 38:13	105:24 120:1	G	24:2 34:12
97:17 114:12	38:19 40:9	four 64:20	G 125:1	35:9 41:15
final 22:19 32:23	44:14 71:12,19	fracture 69:7,12	games 51:6	43:2 45:13

Andrew M. Casden, M.D.
2/23/2017

Page 7

48:13,21,22 49:11 50:6 51:10,15,17,25 53:5 55:6 57:24 58:7,23 61:8,11,15,18 62:1 63:16,17 66:8,13,14 68:3 72:2 97:11 99:5 110:22 120:17 goniometer 19:11,12,14 good 5:7,9 6:3 17:1 52:3,18 56:16 114:19 116:10 great 55:9 76:25 Greyhound 1:6 56:1 groin 39:4,5 grossly 97:8 119:6 GROUP 1:7 grown 61:5 GUBICA 1:6,6 guess 12:5 15:13 49:7 67:8 82:14 86:8 116:19 117:10 Gutstein's 39:10 41:19 42:2,16 42:19 guys 6:7 49:9 50:3 51:6 55:1 57:17 94:22 105:6	Hang 55:1 happen 12:11 114:13 happened 6:12 22:1 59:25 93:18,19 95:3 happening 45:5 49:8 happens 65:22 harassed 57:13 harassing 60:11 harassment 53:1 55:14 hard 81:24 hardware 100:5 harm 49:12 Harold 3:7 50:20 54:24 55:17 56:10 58:6 head 26:22 45:13 70:14 92:18,24 93:6 93:7 headache 92:23 hear 41:19 74:1 heard 29:13 45:5 48:17 52:24,25 53:1 66:20 71:2 hearing 3:16 65:21 height 31:25 68:10 Hello 54:14 help 34:25 hereunto 126:19 herniated 33:3 79:6,17 81:10 81:15,18 83:1 herniation 30:12 30:14,15 31:3 35:17,19,23,25 36:9 37:12 43:10,14,21	71:16,18 72:19 73:22 74:10,15 75:14,18,21 78:7 82:4,15 82:16 98:17 herniations 36:23 37:1,2 68:8 Hi 54:15,17 history 12:24 13:1,6,10 hlmoroknek@... 3:10 hold 16:12 55:2 65:1 101:24 Hollywood 2:6 honestly 46:10 47:22 50:13 63:22 66:2,3 67:25 Honor 57:13 58:2,6,15 62:4 62:9 63:2,16 HONORABLE 3:14 hospital 5:14 9:24 24:8,9,13 28:6 86:6 88:8 88:12 92:14,19 107:10 hour 83:14 hours 83:3,7,8 Huh 73:6 hurt 79:9 hurts 79:10 hydrated 31:4 31:19,22 33:17 34:3,16 hydration 30:25 31:1,2,3 32:6 33:2,21 34:15 74:22 75:2	ice 86:2,5 idea 51:19 72:16 78:25 106:14 107:5,23 Identification 124:9 identify 56:4,8 IME 122:7 IMEs 89:25 105:11 immediately 58:5 impact 86:2 impaied 115:5 impalement 114:25 impingement 44:15 importance 22:25 important 7:16 7:18 14:24 24:5 28:19 42:7,10 impression 37:5 inappropriate 60:14 include 9:7,8 including 9:3 57:5,7 60:6 101:2 117:6,14 117:14 increase 44:22 increased 67:15 76:18 77:3 indicated 86:6 117:13 119:22 indication 75:13 indications 76:15 information 13:14 initial 69:6 initially 68:16 69:2 78:3	injections 102:20 103:13 103:18,23 119:7 122:16 injured 40:15 81:13 injuries 8:22 13:7,22 26:22 26:22,23 92:18 93:5,16,23,25 94:14 115:15 115:23 injury 29:23 39:18 45:19,22 68:12 72:8 78:8 79:1,17 85:13,15,21,22 85:24 86:3,7 93:12,16 95:12 114:23,23 115:3 inside 40:25 insofar 102:2 instance 8:21 9:1 16:13 17:4 40:12 instrumentation 17:22 98:10 insurance 106:16 intensity 34:6 interested 26:24 126:17 interosseous 87:18 interrupt 16:5 23:13 interrupts 49:17 intimation 84:23 intimidating 56:23 involved 75:20 issue 13:20 68:1 issues 13:7 63:19
--	---	--	---	--

Andrew M. Casden, M.D.
2/23/2017

Page 8

J	26:11 30:5	33:3,16,24	70:11 71:12,17	lifetime 109:18
J 2:17	32:16 34:5	34:14 36:9	71:24 78:8	lifting 40:4
January 6:19	40:6 42:6,9	38:3,8 39:24	81:10 82:19	ligament 85:24
9:18 22:12	46:23 57:19	40:1,8,12	88:2 93:3	light 28:2,8
89:23	59:18 60:9	43:10,14,21	96:10	likelihoods
job 46:20	61:10 62:8	44:5,14 67:16	left-sided 35:16	109:6
John 6:6	63:9 66:12	70:16 71:8,8	37:16 41:2	limp 10:17 11:11
Joint 5:14	73:16,17,18	71:23 72:19	leg 16:6,7,8,12	15:14 40:7
JOSE 1:3	74:17 75:8	73:22 74:15,23	16:14 17:13,14	limping 11:1,3,4
JR 3:14	83:3,5,7 85:6	75:12,14 97:24	17:15 38:25	11:8
judge 50:10 52:1	85:10 86:16,17	98:22 100:11	40:5 78:5,8,18	line 51:3 54:23
52:13,15 53:16	88:5,22 89:5,6	108:10	78:18,22 79:4	Lines 1:6 56:1
53:17 54:18	89:11,15 93:4	lack 14:9	79:5	list 41:20
55:3 56:16	93:18 95:9	laminectomy	legs 93:2	listen 50:19
57:6 58:20	98:15,16	17:21 98:9,24	let's 32:3 49:9	listening 10:19
59:7,22 61:12	101:16 107:1	large 30:12,15	50:10,15,16,20	literature 110:12
61:17 62:17	107:11,13	30:20 75:17,20	50:23 52:4,7	110:17,20
63:9,16,25	109:2 110:4	78:6 82:15,16	60:7 65:22	little 5:10 6:4 8:7
64:2,9	112:9 115:11	larger 43:18	67:6,7 88:13	10:11,13 20:2
jury 115:8	116:17 117:8,9	44:1,4,5,8,10	93:20,20 98:4	20:3,5 29:1,3
Justice 63:10	118:4 121:22	lateral 35:19	108:8	54:11 59:18
	122:24 123:1	38:5 71:6,11	level 29:16 32:5	71:3 72:11,25
K	knowing 18:13	laterally 40:8	35:3 38:7,24	108:1 114:22
K 125:1	knowledge 98:14	70:6,10,15	70:16 76:15	122:25
KAROLY 1:6	Kolb 26:7	76:20	96:19 97:14	living 100:4
keep 7:10 22:5		laugh 73:12	98:17 106:17	LLC 1:7
keeps 89:5	L	laughing 57:3	107:6 109:1	LLP 2:13
kept 14:16	L 3:7 125:1	73:10	117:14,15	logical 41:12
kidding 49:10	L2 43:23	law 2:3 7:25 8:3	120:21 123:2	long 5:19,22
49:11	L3 43:23	lawyer 6:1 64:6	levels 32:5 33:24	10:1,4 16:22
kind 8:9 46:20	L4 39:1,8,22	64:7 90:20	34:2,15 38:10	17:10 20:13,21
111:5 119:20	43:23	104:23	67:17 68:24	22:14 83:23
kinds 14:4	L4-5 29:16	lawyers 12:12	71:7,22,24	117:7
Kings 113:21	39:18	63:23 64:2,3,5	74:24 75:1	longer 10:11,14
knee 16:13 45:19	L4-L5 17:22	lay 7:12,17	106:16 109:19	10:18
45:22	39:22 44:14	lays 7:15	122:25	look 28:2 30:23
knees 20:9,10,11	72:12 76:10,12	LC 2:3	Lewis 2:13 8:2	30:24 31:1,11
knew 104:24	76:18 77:3	leave 66:18 84:1	Lichy's 26:5	32:1 36:3 37:1
knock 48:1	96:19 97:13,19	leaving 66:16	lie 55:20,20,21	41:1 46:3
50:12 65:6	98:5,20 100:10	left 15:22 16:1,4	66:12	64:14 65:25
know 6:12 9:5	L5 28:21 39:1	16:6,7,8 21:14	lied 66:10	77:18,19 95:17
10:13 11:7,12	44:14	30:15,16 36:14	lies 57:24	121:8
11:20 12:4,20	L5-S1 17:22	36:22 37:11,25	life 63:11 109:18	looked 24:8
17:23 18:14	28:23 29:17	38:17 40:17,24	118:22,25	30:24 31:2
23:23 25:8	30:16 32:5,13	64:21 68:9	119:1,9	34:21 72:21

Andrew M. Casden, M.D.
2/23/2017

Page 9

95:16	making 49:16	53:2,7,10,15	124:1	medicine 5:23
looking 28:8	94:14 103:19	53:19,22 54:2	mean 9:24 11:20	mentioned 30:6
31:16 33:12	man 47:3 67:24	54:5,8,10,14	12:4,20 18:8	112:15
34:2,5 65:24	73:8	54:15,16,20	29:25 31:18	middle 35:20
66:1 77:16	manage 111:16	55:5,9,16,19	36:24 43:16,18	migrated 81:20
85:9 93:17	management	55:22 56:5,5	44:1 57:1	81:21
96:12	108:23 110:25	56:16,17 57:7	61:11 62:4,5	Mikelis 24:20
Lopez 114:20,20	111:7,15	58:9,10,15	64:16 72:23	25:2
lost 33:21	119:23 122:14	59:2,12,20	78:2,5 87:19	Mikelis's 24:11
lot 11:16 23:2	manner 60:2	60:1,16 61:10	88:22 89:6	Miller 76:3
73:19 82:22	March 126:20	61:13,19 62:9	90:4 93:17	millimeters
83:5 87:17	mark 77:22	62:19,21 63:4	105:3	72:16
loudly 60:2	marked 124:6,8	63:21 64:1,10	meaning 91:7	mind 52:20
low 14:10 20:24	marriage 126:17	64:17 65:1,4,6	means 15:24	mine 6:1
21:2 47:15	Marshall 3:3	65:10,13,18,23	101:8	minute 37:24
79:4	6:21 7:21	66:2,4,7,10,18	meant 44:6	43:3
lower 14:5 19:23	match 84:5,24	66:20,24 67:2	measure 30:18	minutes 10:3,5,7
79:24 86:19	material 7:2	67:5,21,24	measured 19:9	10:17 52:10,21
87:23 93:2	36:11 40:23	68:2,19 69:18	measurement	66:15
120:21	materials 7:2,5	69:24 70:20	35:5 87:13	misdemeanor
luck 52:3	matter 11:22	71:1 72:7 73:3	measurements	55:15
lumbar 15:18	126:18	73:7,10,13,17	19:7	misplaced 100:2
17:21 19:1	McELFISH 2:3	73:19,20 74:1	mechanical	mistaken 93:8
27:8,10,11,15	2:7 4:3 5:6	74:4 75:7	79:16	114:24 115:6
32:3 33:25	10:12 14:1,18	76:24 77:7	mechanics 95:9	Mobin 34:20
35:2,14 43:3	14:19 25:6,10	78:17,23 80:4	mechanism	35:1
67:8 70:14	25:14,21 28:1	80:18 82:21,24	93:11,15 94:9	Mobin's 34:9
71:5,7,14,15	28:16 30:17	84:15,17 85:4	94:10,12 95:1	74:11
75:21 106:19	36:4 37:19,23	85:8,19 87:5	95:10	modalities
118:8 119:19	38:22 39:17	92:10 94:8,18	med 5:12	100:22
lying 60:18	40:20 41:8	94:22,25 95:8	medial 104:4	modifications
	42:12 43:1,12	96:15 97:5,22	medical 8:15	22:4
M	44:3,11 45:2	98:3,12 99:8	12:25 13:5	modify 22:2
M 1:16 4:3 5:1	46:8,13,18,23	99:14,21 101:9	14:4 17:24	money 64:5
125:1,7,16	47:5,8,13,19	102:6 103:1,6	41:11,16 59:4	month 6:18
126:10	47:22,24 48:1	103:25 104:21	76:5 94:11	months 32:19
M.D 1:16 5:1	48:3,6,9,11,15	106:2,8 107:24	96:25 107:16	120:13 121:4,4
125:7,16	48:18,24 49:1	108:13 110:11	108:19,20	morning 113:20
126:10	49:5,9,14,18	113:1,5,12	110:23 111:12	Moroknek 3:7
machine 21:23	49:23 50:1,6	114:16 115:7	112:21	10:9 13:24
mad 23:16	50:10,13,16,20	115:12 116:3,8	medication	14:17 25:3,8
magnitude	50:24 51:2,9	116:16 117:19	102:17 111:16	25:13 27:25
81:13	51:12,15,19,22	117:23 118:4,9	111:18 112:23	30:13 36:1
main 88:16	51:25 52:4,8	120:10,12,18	medications	37:17,21 38:20
123:7	52:12,16,19	122:4 123:20	111:20 112:3	39:15 40:18

Andrew M. Casden, M.D.
2/23/2017

Page 10

41:5 42:8,25 43:11,15,24 44:9,25 46:7 46:11,16,19,22 47:1,10,18,21 48:5,10,13,17 48:20 49:1,7 49:10,15,19 50:4,8,12,15 50:18 51:1,14 52:7,9,14,18 52:22,25 53:6 53:12,17,20 54:3,6,9,24,24 55:4,7,10,13 56:10,10,25 57:5,10 58:1,3 58:6,10 61:12 61:15,17 62:3 62:10,14,17,20 63:2,5,14,24 64:8,23 65:2,5 65:7,17,22,25 66:14,19,22 67:1,4 68:17 69:9,22 70:17 70:21,24 72:5 73:2,24 75:5 76:21 77:6 78:13,20 80:2 80:15 84:12 85:1,17 87:2 92:4 94:6,15 94:20 95:4 97:2,20,25 99:2,11,18 101:7 102:1,22 103:5,20 104:19 105:21 105:24 107:21 108:12 110:9 112:25 113:4 113:10 114:14 115:4,10,17,25 116:7,14	117:16,22,24 117:25 120:9 120:15 121:24 123:24 motion 15:18 motor 16:23 86:22 87:14,23 88:1 Mount 88:8 107:12 moving 95:10 MRI 27:7,8,9 30:11 31:16,23 69:14,19 72:22 81:9,9 82:14 114:6 MRIs 8:16 30:9 31:8 119:17,19 120:3 121:5 multifaceted 100:22 Multiple 48:19 muscle 16:17 19:23 92:8 muscular 79:16 musculoligam... 85:21 <hr/> N N 2:1 3:1 4:1 5:1 5:1 125:1,1 Nadia 7:23 nail 13:19 nailed 118:17,18 name 6:5 narcotics 112:9 112:18 nature 43:5,6,7 67:12 70:3 necessarily 81:19 85:12,16 85:23 necessary 9:4,10 96:8,11,13 119:8	neck 15:20 30:8 68:15 85:14 92:25,25 122:6 122:6,8 123:5 123:9,12 need 47:3 62:23 63:22,23 64:1 64:11 85:5 108:18 109:18 110:24,25 117:5 118:12 118:16 121:5 122:22 123:8 123:12 needed 9:12 96:18 117:13 needs 58:5 108:22 111:17 112:21 118:18 negative 92:24 negligent 97:9 nerve 37:9 39:22 44:15,22 97:17 neuroforamen 38:15 neurologic 16:3 16:22 neurological 78:1 84:6,24 neuropsycholo... 26:25 neuroradiolog... 69:11 neurosurgeon 123:8 never 29:11,12 31:2 41:15 59:23 63:9,10 110:1 new 1:2,12,12,18 3:6 23:1 113:23 126:3,5 126:8 Niazi 7:23 nice 28:13,14	118:3,5 non 91:6 non-retained 91:7 nonoperatively 100:17 normal 20:7 34:16 68:10 69:12,16 normal- 34:1 North 2:5 not- 61:19 Notary 1:18 125:23 126:7 notation 84:22 notations 10:22 note 10:21 15:3 15:6,9,11 17:8 18:2,23,24 19:5,17 26:18 39:9,12 42:1 44:15 72:18 74:11 84:18,20 86:18 92:14 101:14,17,20 102:1 113:6 121:24 noted 14:21,24 15:1 28:17 30:12 33:4 43:4 68:10 74:14 84:4 112:18,23 124:10 notes 7:2 21:17 21:22 24:10,10 24:11,11,12,17 24:19,23 25:20 26:13 27:1 101:18,18 121:18 notice 1:17 73:1 73:21 noticed 97:16 November 27:8	27:9 72:22 number 46:2 56:2 68:22 126:24 numbers 110:17 110:18 numbness 38:25 <hr/> O O 125:1 oath 12:8 125:9 object 46:9 58:19 61:22,22 objecting 46:19 objection 10:9 13:24 14:17 25:3,4,11,14 30:13 37:17,21 38:20 39:15 40:18 42:8,25 43:11,15,24 44:9,25 46:7 47:18 49:16 58:13,18,25 68:17 69:22 70:17 72:5 73:2,24 75:5 76:21 77:6 78:13,20 80:2 80:15 82:21 84:12 85:1,17 87:2 92:4 94:6 94:15,20 95:4 97:2,20,25 99:2,11,18 101:7 102:1,22 103:20 104:19 105:21 107:21 108:12 110:9 112:25 113:4 113:10 114:14 115:4,10,17,25 116:7,14 117:16,24 118:1 120:9,15
---	---	---	---	--

Andrew M. Casden, M.D.
2/23/2017

Page 11

121:24 objectionable 46:12 58:12 61:23 objections 46:24 62:2 objective 16:24 objects 58:16 observation 12:16 observations 23:5,19 observe 15:15 33:16 37:4 67:15 74:22 observed 10:23 11:9 15:14 33:2 76:7 obstructionist 61:13,14 obviously 87:7 October 14:11 27:7,12,16 28:18,20 offense 58:16,18 offered 68:15 116:25 offhand 42:4 office 9:20,23 24:19,23 60:8 83:19 90:10,14 oh 5:21 6:17 11:25 51:20 62:20 68:25,25 68:25 91:11 93:17 Ohio 2:16 okay 5:7,16,19 6:14,20,23 7:1 7:11,24 9:1,14 10:21,25 11:6 11:13 12:6 13:13 14:2 16:18 17:2,8 18:25 20:12,23	21:18,22,25 23:17 24:2,16 24:20 25:22 27:3 29:16 31:4,18 35:13 37:15 38:4 42:24 43:9 44:8,20 45:12 47:1,1 48:7 55:1,22 56:15 63:3 65:13,18 66:10,17 67:1 67:4,6,14,19 68:14 70:5,10 70:13,20 71:2 71:10,24 72:2 72:13,18,23 74:5 75:2,10 76:2,6,17,25 77:13,25 78:9 78:18,24 83:23 83:25 84:3,18 85:20 86:13 87:22 89:17,19 89:25 90:9,11 91:5,24 93:20 94:22 95:14,24 98:13 99:1,15 99:24 100:4 101:10 102:19 104:1 105:12 106:2 107:14 107:14,25,25 108:8,14,16,25 109:23 110:6 111:5 112:2,17 114:3 115:8 116:25 118:22 121:8 123:16 old 15:8 23:25 64:12 once 69:19 91:9 ones 7:15,17 12:7 33:12 34:1 46:11	90:11 onset 78:24 79:1 79:7,21 open 89:14 operate 97:24 100:15 102:11 122:24 123:2 operated 102:8 110:4 operating 31:12 84:1 operation 123:4 operations 31:13 operative 26:15 opine 8:17 9:6 45:13 opined 8:19 123:8 opinion 9:2 32:23 45:21,24 62:16 68:15 69:6 86:1,9 91:25 92:1,6 92:12 93:14,22 96:5 100:10 102:14 107:19 108:9,18 110:22 111:10 111:11 115:2 116:25 118:19 118:20 119:3 opinions 7:13 23:4,19 29:18 107:14 108:1 123:16 opportunity 6:3 33:15 86:18 original 23:3 orthopedic 5:13 5:18 31:7 Orthopedics 75:19,25 outcome 126:18 outlined 96:3 outside 48:12	51:12 53:3 57:8,9 59:1,3 60:7 overestimating 119:6 overexaggerated 119:15 overnight 107:7 107:9 <hr/> P P 2:1,1 3:1,1 p.m 1:14 124:10 PAGE 4:2 paid 106:5,21 pain 14:10 18:9 77:4 78:4,5,8 78:10,16,18,22 79:13,16 80:16 83:1 85:14 87:25 91:16,19 91:23,25 92:16 92:25 93:1,1,2 93:2 99:17 102:17 108:23 110:24 111:2,5 111:7,12,15,16 111:18,20 112:3 113:8 114:5 119:23 120:14,16,21 122:6,6,8,13 Papadakis 91:13 113:6,25 116:17,22 118:12 119:10 paper 74:19 75:16 papers 44:21 45:4 121:9 paperwork 23:2 parcel 60:11 part 8:24 60:11 92:20 121:16 parte 54:1	participated 92:7 particular 8:18 8:20 9:6,9 24:4 particularly 108:1 parties 126:16 passenger 94:13 patch 54:22 55:3 patched 54:18 path 64:19 pathological 58:4 pathology 68:4 70:2 72:9 114:11 patient 99:16 111:17 122:12 patient's 99:4 patients 65:16 109:25 110:2,5 pay 105:19 payments 106:16 pending 88:23 89:2 117:20 118:5 people 23:14 31:12 97:4 103:23 percent 88:12,17 109:12 Percentage-wise 109:9 percentages 110:13,19 perform 16:9 period 22:14 person 7:21 Personal 109:24 personally 104:4 121:22 pertinent 7:16 Philly 62:13 phone 2:8,18 3:8
---	--	---	--	---

Andrew M. Casden, M.D.
2/23/2017

Page 12

21:24 50:11 54:13 58:7,9 59:6 photo 93:9 phrase 14:18 physical 48:8 49:12 103:3,8 122:14 physically 10:4 19:25 52:23 59:2,13 64:25 65:2 physician 90:23 90:25 pick 123:1 picture 35:1 piles 7:10 pills 111:2,5,13 111:13 119:24 place 15:3 110:18 122:25 plaintiff 1:4 2:4 8:15 56:3 90:12,16,20,22 119:5 plaintiff's 95:14 118:25 123:7 plaintiffs 116:20 plan 118:23 119:9 plane 77:22 play 101:5 PLC 1:7 please 25:16 54:12 56:3 pleasure 123:23 plus 17:11 point 18:12 48:21 58:22 62:6 89:18 102:24 103:15 103:16 121:2 poor 16:2,19 portion 108:10 position 115:15	115:22 116:4,9 116:13 post 108:17 121:1 posterior 36:18 postoperatively 99:6 potentially 85:22 practice 59:5 88:7,9,16 practicing 5:22 preexisting 80:8 80:10 81:11,12 94:2 114:12 preparation 7:13 prepared 21:19 23:7,20 102:4 118:23 prescribe 111:6 present 3:13 62:14 72:9 presented 13:13 pressure 20:15 pretty 25:10 116:10 previous 18:9 72:21 previously 75:20 primarily 33:13 printed 35:1 printed-out 124:2 prior 13:7,10,22 13:23 14:5,10 22:19 82:20 111:20 probabilities 110:13 probably 5:21 7:23 8:6 10:3,5 21:7 45:20 86:16 96:20 101:12 106:20	110:18 problem 54:11 55:23 56:15 105:20,25 problems 62:16 98:18 100:20 proceed 25:9 59:16 63:17,17 63:24 process 117:25 PRODUCED 4:12 professional 59:24 63:8 professionals 50:5 prognosis 120:5 121:6 progression 120:4 121:6 proportion 43:10,13,17,19 43:20,22 protrude 35:25 protruding 36:11 protrusion 35:24 77:17 85:23 protrusions 43:23 Provder 118:24 119:15 providers 84:10 psychology 26:25 27:1 Public 1:18 125:23 126:7 published 75:18 75:22 pursuant 1:17 push 20:19 put 10:22 12:23 35:5 55:2 99:3 106:20 putting 14:2	37:24 <hr/> Q <hr/> quad 39:7,8,14 39:20 qualities 32:6 quantify 44:17 72:14 quantitative 87:13,13 Queens 113:20 question 11:9,17 18:25 25:11,15 33:1,14 36:7 45:15 46:9,15 47:20 70:22 71:3 73:11 76:25 80:20 82:2 85:4 89:16 92:5 94:7,16 101:19 102:2 112:14 113:14 117:17 117:20 118:2,5 120:1,2 121:25 questioning 58:25 questions 12:24 46:16,21 58:11 58:17 61:23 117:20 118:15 123:21 quintessential 63:7 quite 8:6 59:13 quote 48:10 <hr/> R <hr/> R 2:1 3:1 5:1 126:1 Rabin 121:11,11 radiation 39:3 radicular 40:2 radiographs 27:11,13 28:18	68:21 69:5 radiologic 24:14 radiological 27:4 radiologists 31:8 raise 16:14 RAMON 3:14 range 15:17 106:20 Ray 46:11 49:16 53:9 54:10 56:17 67:23 73:9 Raymond 2:7 51:17 56:5 66:14 read 12:7 25:15 25:17 29:13 41:20,21 69:11 69:16 70:21,25 95:14,21 125:8 reading 7:2 ready 54:21 real 11:11 57:12 60:20 realize 55:10 really 46:10 52:14 57:2,20 60:25 61:6 63:8 64:12 89:15 104:5 114:22 rear- 95:6 rear-end 94:12 reason 11:6 24:3 34:24 57:12 60:20 69:13 92:1 reasonable 9:4 96:7,16 97:24 98:1 99:1,10 103:7,9,19 107:19 113:7 reasonableness 108:3 rebar 115:6
--	--	--	--	---

Andrew M. Casden, M.D.
2/23/2017

Page 13

rebuttal 74:13	recordings 22:5	reluctant 56:18	represents 63:6	24:14 83:5
recall 7:20 8:11	22:6	remember 11:7	require 107:6	84:19 87:8
9:8 11:5,12	records 7:3,12	67:7 77:22	108:20	101:10
18:22 19:4,5	8:15 17:24	93:10 101:17	requirements	reviewing 17:24
25:18,19,24	22:3,17 24:7,9	114:20 119:13	111:16	84:18 101:13
26:11 31:5	25:20,23,25	remind 34:12	RER 1:9	reviews 84:21
32:8 34:23	26:3,5,11 27:1	removed 63:22	reschedule 60:25	REYES 3:14
39:16 42:4	39:10,12 41:19	rephrase 36:5	Research 75:19	rhizotomies
45:11,11 69:1	42:2,17,20	40:21 46:8	75:25	104:12
69:23 72:17	45:9,18 46:2	80:24 112:19	resist 16:11	rid 51:22
74:17 75:6,9	83:6,6 84:4,7	115:18 120:10	resistance 19:23	ridiculous 46:22
77:13,14 91:17	84:19 86:14	120:11	resorbed 74:15	52:2 64:17
91:20,21 92:20	92:14 96:3	report 4:8 6:24	75:3	right 7:20 8:8
95:17,21	116:11	7:11 8:12,16	resorption 74:6	9:20,25 10:1
101:12 114:2	Rectal 114:23	8:25 9:2,7	74:20 75:4,12	12:10,15 14:8
117:7 119:11	rectum 115:6	10:23 14:21	75:16,20	14:13 15:23,25
119:16 121:16	refer 119:22	15:4 21:18	respect 10:25	17:13,14,15
receive 31:8	reference 26:12	22:2,8,15,16	13:4 18:6,25	19:6 21:1
received 9:3	74:18	22:18,19 24:21	22:8 24:16,20	23:16 28:11
14:14,20	references 26:14	26:18 31:6	34:8 35:14	30:4,6,11
103:17	referring 20:8	32:7,9,12,19	36:8 38:4,5	31:15 32:2,18
Recess 48:4	23:18 24:17,21	34:9 41:23	44:12 58:14	36:16,22 37:16
50:22	35:19 109:2	42:3,6,10,14	67:19 69:25	38:16,17,25
recognized 37:2	reflect 48:5	42:22 69:6,20	86:14 87:22	39:2,7,9,14,23
recollect 42:3	69:20	70:12 73:25	88:7 91:24	40:12,25 54:7
recollection 8:12	reflexes 17:11	74:3 76:9	96:2 98:5,22	57:4 59:21
34:25 71:11	20:1,20	77:25 83:16	100:11 103:18	61:8,16 64:6
recommend	refresh 34:25	84:20 86:16,17	108:8 122:5	67:19 69:4
120:3 122:15	regard 34:11	88:3 89:6,12	response 60:16	75:11 78:11
122:16	45:15 47:15	95:19 96:4	result 17:4	79:10 80:9
recommendati...	77:13 102:14	101:14,20,22	results 69:19	82:13 86:10,22
119:14 122:9	103:17	102:5 104:17	retained 89:2,5	86:24 87:14,22
recommended	Regardless	112:12 121:18	90:19,24 91:6	88:18,19,20,23
102:10	83:23,24	122:2 123:17	retrolisthesis	90:10,15 93:3
record 14:15,20	registered 18:19	124:3,4,7	28:21,24 33:9	97:14 98:4
21:16 25:17	regression 75:17	reporter 56:14	retrospect 87:16	114:13,25
48:3,5 50:23	relate 20:23	70:23 124:4	returned 98:11	120:7,8,14
53:21,23 56:4	29:18	reports 7:10	returning	123:3,14
56:9,13 58:15	related 8:23 14:5	23:3,17,25,25	102:19	right-sided 38:1
70:25 83:9	16:19 26:21	24:18 25:1,19	reveal 40:1	38:18,19 41:3
86:10 87:8,10	45:22 75:19,25	26:15 27:18	review 8:15,21	41:3 44:12
94:24 125:10	76:12 122:2	31:8 68:21	22:17 45:25	72:12
125:12 126:13	126:15	74:12,13 82:14	74:14 83:15	rmcelfish@mc...
recorded 11:8	relates 21:2	88:4 89:4,5,19	121:9	2:10
87:16,17	relating 13:6	121:10	reviewed 7:13	room 9:21 12:23

Andrew M. Casden, M.D.
2/23/2017

Page 14

24:7 28:4 56:13,24 57:23 64:22 78:6 84:1 96:10 root 37:9 44:15 44:22 97:17 Rosenberg's 24:10 25:25 Rotated 15:22 routine 88:11 RPR 1:18 rule 23:12 rules 11:23 Rye 3:6	school 5:12 41:16 science 79:20 scope 8:13,24 26:20 45:16 46:5 scratch 20:19 screws 100:1 se 101:13 second 8:8,10 26:10 55:2 65:1 121:8 see 9:19 11:10 15:5,7 19:19 22:8 25:1,23 25:25 26:2,5 26:15 27:18,19 30:11 34:19,22 35:7,11,14 58:14 62:20 65:22 66:11 68:4,7 70:1,7 72:8 76:11,17 81:22 82:3,6 84:3 85:12,16 85:23,24 86:10 94:23 100:7 101:13 105:25 110:7 120:4 seeing 23:24 25:18,19 28:14 116:11 seen 12:11 29:12 34:8 41:21 44:20 45:18 60:15 63:11 67:10 72:21 79:12,15,19 93:9 118:22 segment 108:25 109:2,7 110:8 110:14 117:15 118:13 self 18:1 sending 101:23	101:25 sense 18:19 41:12,14 46:14 46:17,24,25 87:17,21 September 4:9 22:10 124:8 Seriously 47:8 67:22 service 21:20 set 30:8 83:13 126:11,19 sets 30:7 setting 59:25 seven 5:21 11:16 121:4 severe 120:14 severity 120:17 shenanigans 47:4,7,9,25 48:2 51:11 Sherbourne 2:5 show 28:15 30:1 117:18 118:3 showed 68:8 69:14 shown 68:20,21 shred 7:8 shredded 14:16 14:22 42:19 shrinkage 73:21 shrunk 73:1 74:16 side 11:4,8,10 15:25 16:1,4 30:15,16 37:10 37:11 38:16,17 40:13 71:12,17 71:25 78:11 81:10 82:19 86:24 87:15 88:2 sign 33:9,11 91:23 98:18 signal 31:23,24	34:6,6 67:15 67:16 69:14 Signed 125:19 significant 38:11 signs 20:15,21 44:20 similar 21:2 116:15 simple 25:10 58:21 simply 60:4 Sinai 88:8 107:12 single 57:2 sir 36:9 65:17 108:25 sit 13:21 119:12 sits 59:4 situation 99:22 113:17 situations 99:19 six 32:19 107:4 113:14 size 31:25 43:22 76:18 slightly 13:19 80:20 slipped 29:2 slowly 15:17 small 72:15,15 98:17 smaller 43:20 74:9 SMITH 2:13 socks 21:7,9 somebody 6:21 16:21,25 18:11 Somewhat 70:11 sorry 16:4 23:10 27:13 36:7 40:23 60:18 71:15 74:1 75:22 84:15 94:22 120:14 sort 12:17 32:23	sorts 62:25 sound 21:12 57:1 sounded 6:3 sounds 51:20,24 114:19 speak 59:17 SPEAKER 54:15,17,22 55:1,25 56:7 speaking 116:12 specific 27:4 33:7 94:9 110:17 specifically 15:11 20:8 32:12 38:23 72:25 speculate 87:7 speed 94:11 spend 64:5 88:15 spent 5:14 83:4 spinal 5:15 13:2 20:16 26:21,22 26:23 35:20 70:8 spine 13:23 14:5 15:18,21 19:2 27:7,8,9,10,11 27:15 29:23 30:2,4 33:25 35:3 36:24 68:13 70:1,6 70:14 71:5,7 79:24 96:21 100:5 118:7,8 119:17,19 spoke 67:12 Spontaneous 75:17 ss 125:4 126:4 staff 53:1 59:3 stand 120:4 stare 62:24
---	---	---	---	--

Andrew M. Casden, M.D.
2/23/2017

Page 15

staring 51:5 56:24 64:15	125:19	126:12	28:24 31:21	96:4 97:11
start 32:3 47:2,4 52:10,13 66:16	subsequently 41:22	symmetric 17:11 20:6	38:23 51:18	125:8,11
started 6:3 12:21 104:24 105:10	suffered 13:22	symptomatic 80:6,7,14,17 81:2,5 82:20	52:4 56:18	126:13
starting 25:6	sufficient 81:13 103:2	symptoms 44:22 79:2,3,4 81:8	57:24 58:19	testing 16:17,23
state 1:18 98:19 125:3,23 126:3 126:8	suggest 62:5 Suite 2:15	94:4 99:4 120:6,7	66:23 74:8	thank 34:18
statement 50:25	supplemental 74:12		76:19 77:2	49:20,22 54:12
STATES 1:1	suppose 11:18 84:23	T	87:9,12 99:25 104:7	65:17,18 70:24
stay 107:7,9	supposed 62:12 62:12	T 4:6 125:1 126:1,1	telling 50:14 52:2	85:5 86:13
stenosis 38:5,6 71:21 81:11	sure 10:21 23:16 27:6 32:25	T1 69:2,15 77:20 T2 69:15 77:20	ten 15:19 84:9 84:14,16 89:24	88:6 123:22
step 52:20	36:6 43:16	take 10:2,13 12:23 21:9,17	90:2 109:8	thanks 5:9 123:24
stiffness 92:25	61:6 66:5	25:12 56:21	term 14:9 19:9 74:5	thecal 37:4,5,8
stop 18:11 47:22 47:23,23,24,25 48:21 49:14,18 50:14 65:9,9 65:12,14,14 67:21,23,24	70:23 96:19 101:8 115:21	57:9 66:4 72:18,23 81:25 100:2 101:4	terminated 57:11	therapy 103:3,8 122:14
stopped 58:5	surgeon 31:7 115:14	taken 10:11,17 28:20 48:4	termination 57:20 60:23 64:19	thereof 115:24
straight 16:12 16:14	surgeons 100:9 108:2	50:22 125:9	terms 11:3 13:6 19:7 40:2	thing 10:15 20:18 55:16
Street 1:12 2:15	surgeries 96:6	takes 58:16 83:23 112:5	43:22 45:15	59:8 78:4
strength 15:23 15:24,25 16:23 17:14 92:9	surgery 5:13,15 5:18 9:4,10	talk 47:5 53:15 62:24 66:25	46:4 72:16	106:7 119:20
structural 114:6	17:18,20 18:3 18:9 24:13	talked 46:3 76:7 101:15	93:24 94:9	124:1
structure 29:23 29:25 85:11,15	81:25 96:12,14 96:18 97:13	talking 27:3,17 33:8 81:16	95:1,9 96:25	things 15:5 57:10 59:6
student 76:5	98:5,6,20 99:7 99:25 100:19	110:3 122:2	102:7 110:18	60:22 61:3
studies 24:14 27:4,5,18,19 27:20 28:3,5,9 30:6 69:15 77:21 119:6	100:23 102:18 106:6,6 110:1 111:21 112:4 117:6,13 118:12 121:6 122:15,22 123:9,12	talks 64:6,7 tape 21:25 teaming 60:17 technically 55:11,13 telephone 3:15 3:15 55:25 Telephonic 65:21 tell 5:10 12:16 13:5 18:12	111:12 120:4 terrible 36:7 test 11:10 16:9 16:14,22 17:4 18:11 19:21,21 19:22,24	62:25 63:5 64:11,15 73:19 95:11 103:22
subject 35:13 48:22	surgical 18:3 106:22,23 107:17 121:1		tested 19:22 87:4 92:8	think 7:18 12:4 19:18 21:5
subjecting 48:24	Suzanne 76:3		testified 5:3 10:6 25:5 80:25 82:16 91:15 105:2 113:20 118:10 123:18	22:22,25 29:22 32:13 36:23 39:21,23 48:21 49:10 63:12 67:9,9,14 71:20 72:11 78:14 79:6,9 79:10,22 81:9 81:11,12,18,19 81:21 82:4,8 86:16 91:2 92:7 93:25 94:1,1 95:23 96:18,21 97:3 97:4,8,10 98:18 99:5,12 99:23 102:21
subjective 16:22 18:10 120:23	sworn 5:2		testimony 11:17 14:14 26:21 83:18 91:20	
subscribed				

Andrew M. Casden, M.D.
2/23/2017

Page 16

103:11 104:8,9 111:17 112:21 114:22 116:10 116:15 117:8 118:18 119:5 122:21,23 thought 7:15 16:2 47:21 93:17 thousands 110:5 threat 50:8 51:21,24 threaten 49:12 50:5,7 51:10 threatened 48:7 52:23 59:2,13 60:1 64:25 65:2 three 15:12 22:23 53:6 100:23 time 12:20 15:6 15:9 21:8 22:14 23:7,20 29:24 47:16 49:21 51:18 65:19 68:4 74:9 76:5 78:8 79:25 83:12 88:12,14,15,17 90:18,19 96:9 117:11 120:22 121:2 124:10 times 8:5 48:19 53:6 64:20 82:23 83:6 84:20 91:5,6 tired 57:13,14 Tizanidine 112:5,15 today 5:8 6:24 7:12 13:18,21 14:14 22:9 23:15 27:21 32:22 49:21	84:1 96:4 104:17 117:11 123:18 toe 40:4 toes 21:1 told 58:18 59:11 60:4 61:19 Tom 52:5 54:10 Town 63:10 track 17:10 20:13,21 trained 5:13 transcript 113:6 117:17,18 118:2 125:8,10 transcripts 117:10,11 trauma 76:11,15 91:16,20,23 traumatic 29:5,6 29:11 43:5,7 44:21 67:11 70:3 75:14 treat 100:17 treated 50:19 84:9 100:21 116:2 treating 65:16 84:4,7,22 90:23,25 91:8 115:16,24 treatment 9:3 46:5 96:2 101:16 107:16 treatments 119:7 trial 12:12 68:20 105:2 triceps 20:10 87:18 true 10:8 14:16 31:9,10,14,17 35:25 36:22,25 39:4 57:25 60:22 63:3	78:19 101:5,6 114:9 125:10 125:12 126:13 try 15:4 16:13 23:11,11,12,13 23:15 24:3 63:16,17 67:6 71:3 75:10 122:17,19,20 trying 32:15 42:13 56:21 57:14,16 60:19 60:23 73:13 77:1 87:9 102:13,15,25 118:1 Twenty-eight 5:24 twice 95:22 two 6:18 15:12 22:23 23:14 30:7 52:10 59:1 63:13,23 64:1,3,5 89:12 90:8 100:23 118:24 122:17 122:20 two-year-old 49:15 type 13:5 14:10 17:3 21:19 23:14 29:15 40:9 81:14 106:15 112:21 types 13:7 typical 13:2 90:3	uncomfortable 59:11,12 62:7 64:24,25 undergone 75:3 underlying 81:1 81:4 understand 12:6 13:17 31:18 50:1 67:25 80:21 96:23 97:13 98:23 100:6,10 102:14 123:3,7 understanding 10:20 95:2 Understood 118:10 underwent 17:21 UNIDENTIFI... 54:15,17,22 55:1,25 56:7 UNITED 1:1 University 5:12 unprofessional 60:14 unreasonable 96:22 97:1,7 99:13,23 108:11 unretractable 99:16 untrue 60:5 update 22:16 42:5,10,22 69:20 updated 23:1 upper 15:24 19:22 use 19:13 103:22 usually 8:25 9:5 11:21 13:3 24:23 40:3 77:18,18 79:15 112:11 122:17	V v 113:25 vacation 90:7 valid 7:16 varies 90:6 various 68:23 Vasile 45:9 version 23:1 124:3 versus 56:1 73:22 74:23 76:8 88:9 114:21 vertebra 29:1,2 view 89:18 views 35:2 Vincent 45:9 violate 23:12 violated 23:14 violence 48:8 visible 93:5 visits 119:18 voiced 58:12 vs- 1:5
				W W 5:1 125:1 wait 26:10 66:6 124:1,1 waiting 52:12 waive 12:2 walk 11:23 12:17 walked 8:9 10:16 15:17 walking 40:7,7 want 13:18 21:12 24:4 32:2 33:14 48:11 52:10,19 53:2,12,14,15 56:18 58:4 61:2,6 64:4,4,5 65:7 72:24 80:9 81:15

Andrew M. Casden, M.D.
2/23/2017

Page 17

82:13 91:25 105:5 117:10 wanted 6:2 32:22 57:9 65:10,11 77:1 117:12 wants 49:1 Warner 3:3 6:22 Warwick 63:10 wasn't 17:15 41:13 42:7 87:3 114:25 waste 117:11 way 13:19 18:13 27:23 28:15 29:19 36:9,13 44:17 50:19 55:6 57:1 59:16 62:3 64:8 75:8 76:11 85:20 86:15 92:1 93:14 95:25 96:11 100:8 109:10,16 114:18 126:17 We'll 28:14 we're 23:18 50:11 weakness 16:1 16:10 37:16 38:2,19,25 39:13,20 40:3 40:4,5,9,16 41:3 78:19 86:19,21,22 87:14,18,24 88:2 week 62:11 79:14 90:8 113:23 weekends 88:15 weighted 69:15 77:21 Wendy 119:1	went 5:12 48:6 57:8 weren't 53:23 West 2:6 108:1 Westchester 3:5 WHEREOF 126:19 white 28:13 window 77:15 Winn 26:9,14,16 102:2 Winn's 26:13 101:10,16,17 101:18,21 withdraw 88:25 97:23 withstanding 61:20 witness 4:2 5:2 5:20 10:10 11:16,22 13:25 18:15 25:18 30:14 36:2 37:18,22 38:21 39:16 40:19 41:6 42:9 43:18 44:1,10 49:13,22,24 68:18 69:10,23 70:19 72:6 73:25 74:3 75:6 76:22 78:14,21 80:3 80:16 82:22 84:14,16 85:3 85:7,18 87:3 90:21 92:6 94:17,21 95:6 96:11 97:3,21 98:1 99:3,12 99:19 102:23 103:21 104:20 105:23,25 106:5 107:22 110:10 113:11	114:15 115:5 115:11,18 116:1,15 118:6 120:16 123:21 123:23,25 126:11,14,19 witnesses 55:24 60:4,5 65:8 wondering 123:11 Woolery 21:12 word 47:10,11 words 12:5 41:11 43:21 63:13 82:10 91:21 work 5:20,25 6:2 6:4 11:16 18:15 88:9,10 88:14 90:13 100:25 104:9 104:24 117:15 worked 8:3 working 12:21 21:17 114:17 world 53:9 62:22 worse 86:7 93:3 116:9,13 worth 28:14 102:25 wouldn't 20:23 85:12,15,23 96:24 write 9:7 75:16 77:14 written 44:21 89:20 wrong 111:10 wrote 32:19 74:18	<hr/> Y <hr/> Yeah 6:13 12:5 41:13 111:4 122:12 123:15 year 5:14 32:16 88:13 89:12,20 89:21 90:1,3,3 119:19 120:14 years 5:21,24 11:16 15:8,12 15:12 18:17 89:12 91:11 100:23 104:8 109:8,25 114:21 yesterday 23:15 York 1:2,12,12 1:18 3:6 113:23 126:3,5 126:8 Yup 53:19 <hr/> Z <hr/> 0 <hr/> 0 15:20 19:1 01GI6230654 126:24 <hr/> 1 <hr/> 1 4:8 120:20 124:7 1:57 1:14 10 10:5 18:7,19 83:7 120:21,24 120:24,24 10,000 83:15 104:17 10573 3:6 11 27:10 11-1-2018 126:25 11-millimeter 82:18,25 1112 2:5	124 4:8 13 28:18 30:8 72:4,10 73:22 75:14 76:8 77:8 1375 2:15 14-3725 1:9 14-cv-3725 56:2 15 30:9 72:3 74:24 76:19 77:3 83:8 86:2 15,000 83:18 16 6:19 1600 2:15 17,500 104:18 19th 9:18 <hr/> 2 <hr/> 2-3 43:8 20 15:22,23 18:17 104:8 20-plus 109:25 2003 114:1 2011 114:21 2013 14:6,11 15:10 27:7,8,9 27:12,16 28:20 30:11 32:4 35:14 43:4 67:8 68:5 71:8 71:12 72:22 75:4 77:14 82:17 2014 86:2,7,11 2015 27:10 72:2 72:9 73:3,22 74:14 75:12 76:7 2016 4:9 9:18 22:11 124:8 2017 1:13 126:20 215.586.8810 2:18 216.344.9421
---	---	--	--	--

Andrew M. Casden, M.D.
2/23/2017

Page 18

2:19	8th 27:9			
23 1:13				
25 8:6	9			
25th 27:12,16	9 27:7			
28:20	90069 2:6			
28 4:9 22:10	914.977.7300 3:8			
124:8	914.977.7301 3:9			
28th 27:8	98th 1:12			
	9th 2:15			
3				
3 87:23				
3-4 43:8				
3:50 124:10				
30 10:3				
30,000 113:18				
310.659.4900 2:8				
310.659.4926 2:9				
37 15:13				
39- 109:5				
4				
4-5 43:8				
40 15:8,21				
40-year-old				
109:5				
44114 2:16				
45 10:3 106:21				
5				
5 1:12 4:3 15:23				
15:23 87:23				
50,000 106:21				
6				
6 120:24				
6th 126:20				
7				
7,500 83:22				
104:17 105:8				
8				
8 72:22				
80 88:17				
800 3:5				
87 63:9				



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September 28, 2016

Ms. Nadia E. Niazi
Marshall, Dennehey, Warner, Coleman & Goggin
800 Westchester Avenue, Suite C-700
Rye Brook, New York 10573

Re: **Jose Bauta**
Date of Accident: 08/09/2013

Dear Ms. Niazi:

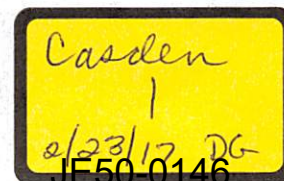
I had the opportunity to perform an independent medical evaluation and review of medical records regarding Mr. Jose Bauta. Mr. Bauta presented a driver's license for identification purposes. His date of birth was noted to be December 23, 1975, and he was 40 years old. The examination was carried out in my office on January 19, 2016 located at 5 East 98th Street.

Mr. Bauta reported to me he was involved in a motor vehicle accident on October 9, 2013. At that time he was a passenger on a bus which "crashed". The bus hit the back of a tractor trailer, but he does not remember many details of the accident. He is not sure if the bus drove away from the accident or if it was towed. He was unrestrained at that time. He is not sure if he was taken by ambulance, but he remembers awakening that night in a hospital. According to Mr. Bauta he was treated and released. No fractures were identified, and no surgery was done immediately after the accident. Mr. Bauta reports that the accident is "a blur".

Mr. Bauta reports prior to the accident of October 9, 2013 he had no history of neck or lower back problems. He did not see a physician, and he had no previous MRI or x-rays.

Mr. Bauta reported prior to the accident he was working "side jobs" including yard work and little jobs. He has not worked since the accident.

Mr. Bauta reported that he continued to have pain following the accident with lower back pain radiating down into the lower extremities. He also had a stiff neck after the accident and headache. He tried physical therapy and epidural injections without significant improvement. The pain persisted and seemed to increase.



Re: **Jose Bauta**

September 28, 2016

Page 2

Mr. Bauta reported that in May of 2015 he underwent lumbar spinal surgery by Dr. Cordiale. Dr. Cordiale performed a fusion with screws in his back. Mr. Bauta reports that following surgery it "took some pain away", and that he has a "different type of pain now".

Currently Mr. Bauta complains of lower back pain up and down his entire back. He says the pain varies from a 6 to a 10/10. Most days he is about an 8/10. He has pain in the buttock but no leg pain. He does complain of a feeling of weakness in the legs with numbness and tingling. He says the left side is worse than the right side. He says the numbness of the left leg is worse post operatively. He takes Tizanidine at the present time. The pain is quite daily and limiting for him.

Mr. Bauta notes that he also has continued cervical pain when he turns his head to the left or the right along with stiffness. His arms do not feel as strong as before the accident, although he says he does not get tingling. He does not exercise at all because it hurts. He currently is undergoing physical therapy.

Mr. Bauta reports that he walks with a cane. He says he can sit, stand and walk for less than 15 minutes. He notes physical therapy gives him some temporary improvement and then the pain gets worse again. He has headaches on a regular basis also, and he uses the cane all the time.

On examination in my office Mr. Bauta moved around slowly with difficulty getting up from the chair. He had a limp when he walked. His gait was slow. Range of motion of the lumbar spine was 10 degrees of flexion with pain, 0 degrees of extension with pain. Flexion of the cervical spine was 40 degrees, extension 20 degrees, left and right rotation 20 degrees. He had a well healed midline posterior scar. His neurological evaluation revealed 5/5 motor strength in the upper extremities. Lower extremities were 5/5 on the right side, but 4/5 for knee extension and dorsiflexion on the left side but this was felt to be secondary to poor effort rather than a neurologic deficit. Long track findings were absent. Reflexes were 1 plus equal, and symmetric.

I had the opportunity to review various medical records.

Mr. Bauta was seen on the day of the accident, October 9, 2013 at Evangelical Community Hospital. The emergency room note reveals that he was brought to the emergency room via EMS complaining of having struck his head with a headache. He reported some dizziness as well with neck stiffness. He denied chest pain, shortness of breath or back pain at the time of the accident. He did complain of pain in both lower legs, right worse than left. His review of systems was noted to be positive for headaches, meaning that he had a history of headaches. His examination reported some stiffness in the cervical spine, abrasion to the head and face, otherwise a normal neurological evaluation. During this hospital emergency room visit he had a CT scan of the cervical spine which was normal with no evidence of trauma. He had a CT scan of the head done without evidence of any acute findings. He had a CT scan of the facial

Re: Jose Bauta

September 28, 2016

Page 3

OCT -> MARCH?

bones with no facial fractures noted. He was discharged in good condition with facial and scalp contusions. He was told to follow-up with a physician.

Mr. Bauta was seen at Brookdale Hospital Medical Center on October 10, 2013. At that time he complained of whole body pain having been involved in a motor vehicle accident the day prior. He was noted to be complaining of "entire body pain". He denied nausea, vomiting, blurred vision, and difficulty walking. He was seen in the emergency room at Brookdale where he was felt to have soft tissue contusions of the scalp, but no further diagnostic tests were done. He was treated and released.

Mr. Bauta was seen in consultation by Dr. Ifran A. Allidin on March 13, 2014. Dr. Allidin notes that Mr. Bauta complained of neck pain and low back pain at the time. He noted that he was taken by ambulance to the hospital in Pennsylvania where the evaluation was negative for fractures. He then notes that he presented to New York Rehab Center for physical therapy and chiropractic care. He was now presenting for follow-up with continued complaints of lower back pain radiating into his waist and buttock, but denies radiation into his legs. He said the pain comes and goes from 8 to 10. Mr. Bauta noted that his pain was increased with standing, and difficulty standing from the seated position. He noted occasional numbness and tingling into his left leg. He also complained of neck pain radiating into the trapezius. He denied upper extremity pain. It was also noted he complained of headaches on a regular basis. He said his neck pain can vary from a 2 to a 10/10. The note reports that he had difficulty sleeping at night due to his headaches. His physical evaluation at that time revealed spasms throughout the spine. He was noted to have decreased range of motion also. He was noted to have weakness in the left upper extremity of the biceps, triceps, interossei, and hand grip of 4/5, right upper extremity 4/5, right lower extremity 3/5 due to pain, left lower extremity 4/5 in hamstrings, hip flexors, knee extensor and EHL. There are no reports of any diagnostic studies in Dr. Allidin's report. He was recommended to continue physical therapy and chiropractic care, and to start Lidocaine patches. He was seen on a regular basis by Dr. Allidin and underwent a series of various injection treatments. On March 17, 2014 he underwent bilateral lumbar medial branch blocks at L3-L4, L4-L5 and L5-S1 by Dr. Terrance Winn. This was done at Accelerated Surgical Center of North Jersey. He had another set of injections on April 5, 2014, and on June 14, 2014. On October 18, 2014 he underwent transforaminal nerve blocks at L2-L3 and L3-L4 also by Dr. Winn. Another set of epidurals was done on October 18, 2014. He continued to be followed by Dr. Allidin on August 27, 2014 where his note reads essentially as the earlier notes did.

Mr. Bauta was seen by Glenn Rosenberg, DC on April 15, 2014. He noted that Mr. Buata was complaining of "generalized back pain" that arose 1 week ago as a result of a fall. The note does not mention detail about the fall but does refer to weakness as a result of the fall one week prior to the visit on April 15, 2014.

Mr. Bauta came under the care of Dr. Demetrios Mikelis on November 17, 2014. At that time Dr. Mikelis was part of New York Spine Specialists. Dr. Mikelis noted that Mr.

Re: Jose Bauta
September 28, 2016
Page 4

Bauta sustained an injury on October 9, 2013. He was complaining of lower back pain, neck pain with radiation into bilateral shoulders and right lower extremity with radiation, numbness and tingling. He was also noted to be complaining of headaches. Dr. Mikelis noted that his motor examination revealed weakness of the deltoid on the right side with upper extremity normal reflexes. He noted weakness of 4/5 tibialis anterior on the right, motor strength 4/5 EHL on the right, and altered sensation in the right L4-L5 and L5-S1 dermatome. Dr. Mikelis reviewed MRI scans from November 7, 2013. He briefly reports in his note herniated nucleus at C4, C5, C6 and C7, and herniated nucleus at L5-S1. This is a very scant report without detail.

Mr. Bauta was seen on January 22, 2015 by Dr. Cordiale. Dr. Cordiale noted essentially the same report as Dr. Mikelis. Further evaluation was done by Dr. Cordiale on March 10, 2015. At that time he reports MRI finding dated February 22, 2015 revealing "HNP L4-S1". He noted L5-S1 axial collapse on lumbar spine x-rays dated March 10, 2015. He recommended surgical intervention at that time. On May 27, 2015 Mr. Bauta underwent spinal surgery at Franklin General Hospital by Dr. Cordiale. He underwent a lumbar laminectomy at L4, L5, S1, facetectomies, discectomies, posterior spinal fusion with pedicle screw fixation L4, L5 and S1. BMP was also used. On June 1, 2015 he underwent a second lumbar spinal surgery where he had revision of the re exploration of the disc space at L5-S1, irrigation and debridement of the posterior spine wound, partial removal of hardware and complex wound closure. Post operatively he was followed by Dr. Cordiale. Post operative notes from June 16, 2015 reveals that he is doing well but continued to complain of pain and symptoms consistent with preoperative symptoms. He continued to be followed by Dr. Cordiale on July 28, 2015 and also on October 6, 2015. At both of those visits he notes to be complaining of continued preoperative pain.

A review of radiologic reports and studies was performed.

CT scan of the cervical spine dated October 9, 2013 was reviewed and demonstrated no evidence of acute injury or trauma to the cervical spine. Degenerative changes were noted.

MRI scan of the lumbar spine dated November 8, 2013 was reviewed and revealed bulging discs at L2-L3, L3-L4, L4-L5; rather large central and left sided herniation L5-S1. This was felt to be central with bilateral posterolateral extension. It was noted to encroach on the thecal sac centrally. No definitive evidence of trauma to the lumbar spine was identified. Degenerative changes are clearly noted.

MRI scan of the cervical spine was reviewed dated November 8, 2013 and revealed disc herniations central and to the left at C4-C5, C5-C6, central at C6-C7. The discs were noted to be of normal height. There was no evidence of any fracture, dislocations or spinal cord injury. There were noted to be disc bulges at C2-C3 and C3-C4. No evidence of any acute injury to the cervical spine.

Re: Jose Bauta

September 28, 2016

Page 5

MRI of the lumbar spine dated February 11, 2015 was reviewed and demonstrated small focal and right lateral disc at L4-L5 and the central and left sided herniation at L5-S1 seen on the previous MRI scan of November 8, 2013. No evidence of a traumatic injury to the lumbar spine is identified.

I reviewed plain radiographs of the cervical and lumbar spine that were taken on October 25, 2013 was reviewed. Radiographs of the lumbar spine reveal grade I retro-spondylolisthesis of L5 on S1, vertebral heights normal, no evidence of fractures. Degenerative changes at L5-S1. Cervical spine x-rays reveal degenerative lipping and calcification at C5-C6. The disc heights were well maintained. Uncinate joints and facet joints intact. No evidence of any fractures noted.

EMG studies of the cervical spine were done on January 10, 2014. These were normal.

In summary, Mr. Bauta was involved in a motor vehicle accident on October 9, 2013. At that time evaluation in the emergency room revealed no evidence of fractures or dislocations to the cervical spine. No imaging studies were done at that time of the lumbar spine indicating that there was no suspicion of injury to the lumbar area. Mr. Bauta was discharged from the hospital and was seen again the next day at Brookdale Hospital Medical Center. During the second emergency room visit no further diagnostic studies are documented. Clearly there was little suspicion of injury to the cervical or lumbar spine at the time of the accident and the day following the accident. Mr. Bauta was complaining of entire body pain on the day following the accident, and he denied lower extremity weakness. He did not complain of lower back pain at that time or the next day when he visited Brookdale Emergency Room.

During my encounter with Dr. Bauta his subjective complaints of pain were out of proportion to his neurologic findings. I felt that Mr. Bauta exhibited poor effort in his neurological evaluation during my examination. I felt that Mr. Bauta although complaining of severe pain certainly did not appear to be in the amount of pain that he subjectively complained of. His objective neurologic findings did not correlate with his continued subjective complaints.

The radiologic studies reviewed did not demonstrate any evidence of trauma to the cervical spine. The MRI scan of the cervical spine dated November 8, 2013 does not show any edema, fractures or dislocations. There are no findings on this MRI scan consistent with trauma to the cervical spine. The MRI study of the lumbar spine dated November 8, 2013 does not demonstrate any fractures or dislocations. There was noted to be a bulge at the level of L4-L5 and a large central and posterolateral disc herniation at L5-S1. There was clearly preexisting degenerative disc disease. No evidence of trauma was identified. I believe the disc herniation was preexisting as there is no other evidence of trauma. In addition Mr. Bauta did not complain to a medical professional of lower back pain until October 17, 2013. I believe within a reasonable degree of medical certainty had he in fact sustained a large acute herniation he should have had immediate onset of severe lower back and leg pain but he did not.

Re: Jose Bauta
September 28, 2016
Page 6

The second surgical procedure performed was clearly a result of complications from the first operative procedure. Normally the patient would not undergo a second operative procedure for evacuation of hematoma and removal of screws.

The cervical radiologic studies including the xray, MRI and CT scan are consistent with preoperative degenerative disease with no evidence of any acute injury. There was clearly preexisting degenerative disease of the lumbar spine also. I believe the herniation noted at L5-S1 was preexisting and not a result of the accident since he did not complain of lower back pain until October 17, 2013. If Mr. Bauta had sustained a large disc herniation at the time of the accident I would have expected the immediate onset of back and leg pain at the time of the accident.

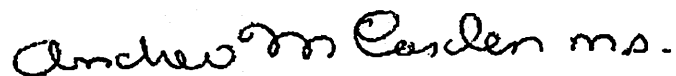
The office note of Glenn Rosenberg dated April 15, 2014 refers to a "fall" a week before the office visit. The details of this fall are not discussed but led to "weakness" as a result of the fall. The office note reports that the "fall" contributed to his lower back complaints. The details of this fall should be investigated further. This fall may have exacerbated his condition at the time of the fall. If the fall was significant enough to cause "weakness of the legs" then it certainly may have contributed to his underlying spinal issues.

I do not think Mr. Bauta will require surgery of his cervical spine. All of the radiologic findings are preexisting degenerative disease and surgery would not be expected to result in improvement of his complaints of cervical pain. I do not think he will require additional surgery on his lumbar spine. He did not improve following the first surgery and I see no additional indication for more surgery on his lumbar spine.

I Andrew M. Casden, M.D. being a physician, duly licensed to practice in the state of New York, pursuant to CPLR section 2106, hereby certify and affirm that the above is true and with a reasonable degree of medical certainty under penalties of perjury.

If you have any further questions please do not hesitate to contact me.

Sincerely yours,

A handwritten signature in black ink that reads "Andrew M. Casden M.D." in a cursive, slightly slanted script.

Andrew M. Casden, M.D.

AMC/rh